A CONSTITUTION FOR PAKISTAN

BY

HERBERT FELDMAN

OXFORD UNIVERSITY PRESS

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PREFACE

This book is a study of those facts and circumstances which have combined to create difficulty in the way of preparing a constitution for Pakistan. It is not a history of Pakistan, it being the view of this writer that the time for preparing such a history has not yet come. Much less is it a mere catalogue of troubles for, if it were, it would have been necessary to have said more about the Rawalpindi Conspiracy, nor would it have been possible to omit all mention of the civil commotion in Karachi in January, 1953, to cite but two instances.

Nothing has been said of remote considerations such as the Kashmir dispute and Indo-Pakistan relations in general which, it may be argued, have exerted indirect influence upon constitution-making, especially in the way of creating circumstances of delay. These are thought to be too distant from the core of the problem to justify inclusion as matters of weight.

A good deal has been included which will be familiar to those who interest themselves in Pakistan's affairs. The inclusion of much that will seem to many to be common knowledge must be excused on the ground that the intention has been to make the book as self-explanatory as possible. It is presumed that the reader knows that in 1947, the Indo-Pakistan sub-continent acquired independence after many years of British rule and that two new Dominions were created of which one was Pakistan. The creation of these two Dominions involved the partition of the sub-continent in the way of dividing Punjab and Bengal so that part of each went to Pakistan and the rest of these two Provinces to India.

A word of very grateful thanks is due to Mr. Amanullah Sardar without whose unfailing help and invaluable advice it is improbable, to say the least, that this book could have been written. Mr. Sardar is an officer of the Ministry of Information and Broadcasting of the Government of Pakistan and for this reason it is necessary to explain that this book owes nothing to any official encouragement, inspiration or guidance. The views it contains and the opinions it expresses are those of the writer who has been solely concerned to set out the facts as objectively and as authoritatively as lies within his compass.

Karachi:

September, 1955.

CHAPTER I.

THE INTERIM CONSTITUTION OF PAKISTAN.

The creation of Pakistan was one of the immediate and direct consequences of the transfer of power, in British India, from Great Britain to the people of the sub-continent. The intention to transfer was first announced on 20 February, 1947 and again confirmed in a statement made by His Majesty's Government on 3 June in the same year. This historic and, in some respects, unprecedented event was the inevitable consequence of certain factors from a consideration of which it was even then possible to predict impending independence. These factors comprised firstly the just aspirations of the people themselves manifested in the prolonged efforts of many leaders and many organisations, notably the Indian National Congress and the Muslim League. Secondly, the visit to India in 1942 of the late Sir Stafford Cripps, at that time a member of Sir Winston Churchill's War Cabinet, followed in 1946, by the Cabinet Mission, had opened the door to a settlement of the question of Indian independence which could never be closed. Thirdly, the ever-increasing representation of Indians in the All-India services, as well as in the Armed Forces, clearly indicated the approaching predominance of Indians in those services, thereby creating a situation in which Indians would, in fact if not in name, have been ruling their own country.

The process of what was called "Indianisation" had started many years before the transfer of power, and even if the speed of that process, as well as the system of appointment to high-level posts, did not satisfy the people of India, there could be no doubt as to the direction of the process or its ultimate consequences. As far back as 1818, when Lord Hastings was Governor-General in Calcutta, he wrote of the time when England would wish to relinquish domination assumed over India,[1] and others coming after him expressed themselves in similar language, notable Thomas Munro, Charles Metcalfe, and Henry Lawrence[2]. The first Indian member of the Indian Civil Service was appointed in 1864 and three more Indians were similarly appointed in 1871[3]. By 1943, there were more

[1] Private Journal of the Marquess of Hastings, London, 1858, ii, p. 326.

[2] See, *e.g.*, Gleig, *Life of Sir Thomas Munro*, pp. 269-285, passim.

[3] Sir Edward Blunt, K.C.I.E., O.B.E., *The Indian Civil Service*, Faber and Faber Ltd., London, 1937, p. 50.

Indian members of the Indian Civil Service than there were British[1] and out of 608 officers of the Indian Police, 186 were Indian.[2] As far back as 1920 Lord Sinha was appointed Governor of the Province of Bihar and Orissa[3], and in 1917 Indians became eligible for the King's Commission and places were reserved for them in the Royal Military College at Sandhurst. Immediately prior to, and during World War II, Indians came to occupy, in ever-increasing numbers, places of the highest importance including the majority of the seats on the Viceroy's Executive Council; and the Indianisation of the commissioned ranks in the Armed Services was hastened to give to Indians complete predominance there. From the point of view of administration, therefore, the problem of transferring power had already been more or less solved, and experience since the partition has justified this view both in Pakistan and in India.

Nevertheless, there remained a difficulty in spite of the evident willingness of the British Government to relinquish its power in the sub-continent and in spite of the clamant desire of the people to be liberated from foreign rule. This difficulty arose from the intense difference of attitude between the Indian National Congress on the one hand and the All-India Muslim League on the other. The latter organisation had, for various reasons, come to represent organised Muslim political opinion on a very large scale, and if the Muslim League did not include within its ranks every prominent and politically active Muslim in the sub-continent, it did eventually come to speak for the greater part of Indian Muslim opinion.

The history of this great division within the ranks of the population of the sub-continent need not be recounted here, but it is necessary to notice that in 1940, at its session at Lahore, the Muslim League adopted a resolution to the effect that in its considered view, no constitutional plan would be acceptable to Muslims unless designed on the basic principle of demarcating Muslim majority areas in such a way as to constitute them autonomous and sovereign. What the Muslim League wanted in effect was the creation of an independent homeland for the Muslims of India.

The Indian National Congress, and the Hindu community as a whole, along with some Muslims (notably Maulana Abul Kalam Azad, a prominent Congressman and at present a Minister of the Indian Cabinet) were utterly opposed to the proposal to divide the

[1]Sir Reginald Coupland, *Report on the Constitutional Problem in India*, Oxford University Press, 1943, Part I, p. 82.

[2]*Ibid.*

[3]*Ibid*, p. 83.

sub-continent, and in 1942, the Indian National Congress passed a resolution rejecting any scheme which would, as the resolution phrased it, involve the disintegration of India. Furthermore in June, 1942, Mr. Gandhi, in an article published in his periodical, *Harijan*, stated that when the British were ready to relinquish their power in the sub-continent, the Indian National Congress would, in his own words, "take delivery". Such was the gauntlet which the Muslim League, in the person of its President, Mr. Jinnah, was not slow to pick up and in this way a situation already sufficiently embittered was rendered a good deal more corrosive.

The British attitude, as stated more than once by Mr. Amery when he was Secretary of State for India in the wartime Government of Sir Winston Churchill, was that until the people of India composed their own communal and internal differences, far-reaching constitutional reform of any sort was impossible. Although the point was not without substance, as the horrors which accompanied the partition of 1947 were later to show, it was over-worked, and the British Government was criticised with some reason for adopting the attitude of sitting back in a spirit of negation[1]. The criticism is mitigated when it is remembered that the Second World War was raging at the time; but, be that as it may, the attitude could not be continued indefinitely; and in 1942, Sir Stafford Cripps began discussions with the Indian leaders with the object of satisfying them, as far as possible, as to the sincerity of British intentions. Sir Stafford Cripps was not successful, but his mission proved to be the commencement of a series of discussions which culminated in Lord Mountbatten's negotiations leading to independence and the creation of two new Dominions.

In 1946, the Cabinet Mission, led by Lord Pethick-Lawrence, proposed that a Constituent Assembly for the whole of India should be set up. The Mission had rejected the idea of a partition, at least until the lapse of a sufficient period of time in which experience of their own proposals could be gained. At the same time, the necessity for safeguards for minority communities had been accepted. The Muslim League ultimately declined to participate in these proposals and the announcement of His Majesty's Government dated 3 June, 1947 stated in paragraph 4 that, while it was not intended to interrupt the work of the existing Constituent Assembly (that is, the Constituent Assembly which had come into being as a result of the Cabinet Mission's proposals) it was nevertheless clear that any constitution framed by that Assembly could

[1] The situation at that time is well summarised in *Report on the Constitutional Problem in India*, op. cit. Part II, passim.

not apply to those parts of the country unwilling to accept it. Subsequent paragraphs of the announcement provided methods by which certain parts of the sub-continent could decide whether to join the existing Constituent Assembly or not. As is known, the decision of the Muslim-majority areas was to stay out and to form a new and separate Constituent Assembly for Pakistan, the creation of which had been agreed to among the Indian leaders. This Constituent Assembly was created by a system of indirect election from the Muslim membership of the provincial Legislatures affected by the partition proposal[1](a).

The transfer of power and the creation of two independent Dominions was legally implemented, by a Statute of the British Parliament known as the Indian Independence Act, 1947[2] of which section 8 provided that, until such time as the Constituent Assembly of Pakistan had framed a constitution for the country, Pakistan would be governed in accordance with the Government of India Act, 1935 or as nearly as might be authorised by the new Government of Pakistan. To meet the changed circumstances created by independence, the Government of India Act, 1935 was, at the outset, made the subject of considerable revision by an Ordinance issued by the Governor-General of undivided India, at the request of the Pakistan leaders[3]. In order, therefore, to understand the basis of Pakistan's interim constitution, it is necessary to know something of the Government of India Act, 1935 and what it was intended originally to do.

This Act was the direct outcome of the Round Table Conferences between the British Government and Indian leaders, the first of which was held in 1930. At that time Mahatma Gandhi and the Indian National Congress were conducting an active campaign against the Government, and the Congress leaders were not present at the first session. At the second session, Mr. Gandhi, as well as Mr. Jinnah, was at the Conference and Mr. Gandhi put forward the Congress view of what constituted the proper basis for settlement of the constitutional problem, with particular reference to the question of communal differences which were agitating the country. His proposals followed in the main the lines of a report produced by a Committee, made up of representatives from the several religious communities of India, which met in 1928 under the chairmanship of the late Pandit Motilal Nehru, father of the present Indian

[1](a) See Mohd. Ashraf, *Cabinet Mission and After*, Lahore, 1946, p. 39 *et seq*.

[2]10 and 11, Geo., VI., Ch. 30.

[3]The Pakistan (Provisional Constitution) Order, 1947, Governor-General's Ordinance No. 22 of 1947.

Prime Minister. This session of the Round Table Conference failed to produce any solution to the communal problem and it was during this eventful time that Mr. Jinnah, according to a speech made by him in 1938 at the Muslim University Union, became convinced that the motives of the Hindu leaders were selfish and inspired by communal feelings and that safeguards for the Muslims of the sub-continent were indispensable.[1]

The intention of the Act, according to the then Secretary of State for India, when addressing the House of Commons on 6 February, 1935, was to enable India to take her place among the fully self-governing members of the British Commonwealth and to provide a method by which the remove of communal differences might be achieved.[2]

The effect of the Act was to abolish dyarchy in the Provinces and to provide India with a revised constitution and a measure of democratic self-government on a franchise which, according to the rules made under the Act, amounted to about fourteen per cent of the population. The reservations and safeguards were such as to make it impossible to assert that India had achieved a full measure of self-government: nevertheless it was evident that the Act gave ample power to ministers elected by popular, if limited, vote, whereby they could extract responsibility by making those powers reserved by the British, for all practical purposes, futile and impracticable.[3] In the House of Lords, when the Bill was discussed, it was observed by the Marquess of Salisbury that, if the Bill were passed there would be no retreat[4], meaning that the Bill established such a measure of self-government as could never be withdrawn at any time afterwards.

The Act comprised fourteen parts, divided into 321 sections to which were added ten schedules. It has been described as one of the greatest constitutional measures ever to be passed by the British Government[5] and certainly, whatever adverse criticism there was to be made, no one could reasonably suggest that adequate energy and attention had not been devoted to its drafting. For its preparation, a powerful committee was set up, under the

[1]Jamiluddin Ahmed, *Speeches and Writings of Mr. Jinnah*, Sh. Mohd. Ashraf, Lahore, 5th. Edition, 1952, p. 43.

[2]Hansard, H. of C. ccxcvii, 1172-4.

[3]C. L. Anand, *The Government of India Act, 1935*, The University Book Agency, Lahore, 2nd. Edition, 1944, Introduction, p. xix.

[4]Parliamentary Debates, Indian Affairs, 1934-45. House of Lords, Column 315.

[5]*The Government of India Act, 1935*, op. cit. p. viii.

chairmanship of Lord Linlithgow, afterwards appointed Viceroy of India, to "consider the future government of India". This committee continued in session for eighteen months almost without interruption. It held 159 meetings and examined 120 witnesses who included in their number 28 leading Indian public men. The Secretary of State for India, Sir Samuel Hoare (afterwards created Lord Templewood) was examined by the Committee for nineteen days and answered more than seven thousand questions.

The result was to produce a constitution of which the most distinctive feature was the change from a unitary to a federal system of government. However, it was provided that that part of the new constitution which related to the establishment of the Federation could not come into effect until there was a concensus of view on the subject among the principal Indian political parties. This concensus was never obtained: on the contrary, the ultimate result of communal and party difference was a partition of the sub-continent; and so this part of the Act did not come into operation, although it is now effective with respect to Pakistan which is, for the present at all events, a Federation under this Act.

It is not and cannot be suggested that the Act contains all that would be required in a constitution drafted for an independent country, and this is only one of the reasons which make it necessary for Pakistan to write a constitution for itself. However, within its two limits, the Government of India Act of 1935 was a comprehensive and thorough piece of legislation as is well shown by the fact that the Constitution of the Republic of India, is conceived, especially as regards administrative matters, within a similar framework.

This, then, is the statute which with amendments provides Pakistan with the constitution by which it has been governed since its creation. The statute is adequate but limited and, in its present form, was scarcely intended to endure for as much as eight years.

The Indian Independence Act of 1947, the second element in Pakistan's interim constitution, provided that until a new constitution was written and adopted, each Constituent Assembly should make laws for its own Dominion. Hence, on 14 August, 1947, the day appointed for the transfer of power, the government of Pakistan, as well as the drafting of its future constitution, became the responsibility of the Constituent Assembly, set up for these purposes in accordance with the Indian Independence Act.

The Pakistan Constituent Assembly met for the first time on Sunday, 10 August, 1947, when Mr. Jogendra Nath Mandal was

elected temporary Chairman[1]. On the following day, Quaid-i-Azam Mohamed Ali Jinnah, already Governor-General of Pakistan, was unanimously elected President. Replying to the speeches of felicitation made by several members of the House, the President took the opportunity to say: "The Constituent Assembly has got two main functions to perform. The first is the very onerous and responsible task of framing our future constitution of Pakistan and the second of functioning as a full and complete sovereign body as the Federal Legislature of Pakistan. . . . I would like to emphasise. . . . that you are now a sovereign, legislative body and you have got all the powers[2].

The first point to be noticed is that in Mr. Jinnah's view, the primary task which awaited the Constituent Assembly was to frame a constitution and the second to function as a Federal Legislature. The next point to be observed is that Mr. Jinnah united in himself the offices of Governor-General and the President of the Constituent Assembly, a remarkable situation terminating only with his death in September of the following year.

This is a convenient point at which to consider the very special place which Mr. Jinnah occupied in Pakistan of which independent Dominion he was, as is well known, the founder. Such was the ascendancy conferred upon him by the extraordinary position which he occupied in the hearts and minds of his followers that, in the words of the Chief Justice of Pakistan, a practice grew up, after Mr. Jinnah's death, "of citing his alleged oral sayings as authority for a particular proposition"[3]. These alleged oral sayings may not be, and doubtless are not, authority which any court of law can or will accept, but for the historian, Mr. Jinnah's speeches and silences must be of the utmost interest.

He was not only an able statesman and shrewd politician; he was also an eminent lawyer who had practised at the Bar in Bombay, where he had competed successfully with legal talents of the first rank. He was equipped with a sharp clarity of thought and there is not the least reason to suppose that he ever confused in his own mind the situation of the statesman and the thinking of the lawyer. What his views were as to certain legal aspects of his duties as Governor-General and as President of the Constituent Assembly are not recorded since, during his lifetime, problems relative to

[1] This gentleman represented what are known as the Scheduled Castes, usually referred to in ordinary parlance as "untouchables".

[2] Constituent Assembly of Pakistan, Debates, Vol. 1, No. 2, p. 18.

[3] Federation of Pakistan v. Maulvi Tamizuddin Khan, P.L.D. 1955, Federal Court, p. 300.

them did not arise. But it can be asserted, with some degree of confidence, that Mr. Jinnah was fully aware, as precisely as it is possible for a man of his unusual abilities to be, of his constitutional position in Pakistan and, when he reminded the Contituent Assembly that it was a sovereign body "with all the powers", it seems certain that he spoke as President of that body, not as Governor-General and certainly not as its legal adviser.

Equally, as Governor-General, there appears to have been no confusion as to the correct position so far as he was concerned. In a speech made on 14 February, 1948, at the Sibi Durbar[1] he said: "I may here draw your attention that as a matter of fact, the present constitution—the Indian Independence Act and adaptations of the Government of India Act, 1935, make the position of the Governor-General and his responsibilities clear". He then goes on to refer to the existing constitutional provisions regarding what is called a Chief Commissioner's Province and the exercise by the Governor-General of his discretion as regards the administration of such a province.[2]

Later, in the same year, on 14 June, when he was addressing the officers of the Staff College at Quetta, Mr. Jinnah said: "I should like you to study the constitution which is in force in Pakistan at present and understand its constitutional and legal implications when you say that you will be faithful to the Constitution of Pakistan. . . . If you have time enough, you should study the Government of India Act, as adapted for use in Pakistan, which is our present Constitution", and he goes on to add, "the executive authority flows from the Head of the Government of Pakistan who is the Governor-General".

Thus far, the constitutional position in Pakistan at the time of its creation was not difficult to understand. The constitution of the country was, temporarily, to be found in the Indian Independence Act of 1947 and the Government of India Act, as adapted. A Constituent Assembly had been brought into existence one of whose two tasks was to provide Pakistan with a constitution in a form that the nation desired. On this subject also, Mr. Jinnah had something to say when addressing the Sibi Durbar. He then observed: "The Constituent Assembly may take some time to accomplish its task of framing the final constitution of our State. It is a stupendous task and it may take eighteen months or two years before it can come into full operation".

[1]A "durbar" is a function of a political nature at which a ruler or leader meets those owing allegiance or a duty to him or to the country he represents.

[2]Unless noted otherwise, extracts from Mr. Jinnah's speeches are taken from a volume of his speeches made after partition and up to the time of his death, printed for the Government of Pakistan in 1948 by the Sind Steam Press.

CHAPTER II.

OBSTACLES TO CONSTITUTION-MAKING.

No one would have disagreed with Mr. Jinnah when he said that to write a constitution is a stupendous task and it remains stupendous even in the most favourable circumstances. As we are about to see, circumstances in Pakistan were not, and are not, among the most favourable.

The difficulties likely to be encountered by any nation faced with the problem of providing itself with a constitution suggest themselves. Assuming that the constitution is intended to accommodate as many points of view as possible and that it will not be imposed by a dictator or by a dictatorial oligarchy, there will be conflicts of ideology and matters of conscience. There will almost certainly be conflicts of interest and sometimes linguistic or ethnic difficulties. The study of a few constitutions now existing in various parts of the world would not fail to reveal the diverse nature and scope of the problems likely to arise.

In the exercise of its advisory jurisdiction, the Federal Court of Pakistan, the supreme judicial tribunal of the country, took the trouble to examine the periods of time taken by some other states in the preparation of their own constitutions. No less than twenty examples were considered and, among them the drafting of the present constitution of the Indian Republic took the longest time, namely two years and ten months. The shortest period (ignoring the first effort at writing a constitution for the Commonwealth of Australia, called "the Sydney Convention") seems to have been taken by Belgium which, in 1830, prepared its constitution, after breaking away from Holland, in three months. A fair average among the rest seems to be in the order of one year.

Pakistan has exceeded every one of these by so great a measure of time that the Chief Justice of Pakistan was moved to say: "There is however one obvious *lacuna* in the Indian Independence Act which is otherwise a masterpiece of draftsmanship—it contains no express provision as to what was to happen if the Constituent Assembly did not or was unable to make a constitution or resigned *en bloc* or converted itself into a perpetual legislature"[1]. It may

[1] Maulvi Tamizuddin Khan's Case, p. 280.

also be suggested that no one foresaw, or could have foreseen, as Mr. Jinnah's words at Sibi indicate, that year after year would pass without any constitution being produced.

The history of events will show that there were several difficulties in the way of writing a constitution, and it may be doubted whether the Constituent Assembly, as it was devised, turned out to be as efficient or as disinterested an instrument as was expected and hoped. Perhaps, however, the most intractable obstacles have arisen from two circumstances which call for special consideration. The first is that the country is divided into two parts separated by a distance of a thousand miles at their nearest points. The second is involved in the difference of view as to the place which Islam should occupy in the constitution.

So far as concerns the Constituent Assembly itself, it was formed by means of indirect election from the Provincial Legislatures of those Provinces which formed Pakistan and, in the case of Punjab and Bengal which were partitioned between Pakistan and India, the Muslim membership of the pre-partition Legislative Assemblies of these two Provinces. The method was that devised by the Cabinet Mission in its proposals for the formation of a Constituent Assembly for an undivided India, published in May 1946, so that it cannot be said that Pakistan was the only begetter of the Assembly that came into being. However, the result of adopting the Cabinet Mission's method was to provide Pakistan with a Constituent Assembly of seventy members whose business was not only to draft a constitution but to legislate for a nation of seventy-five million people. As we have already seen, there was no provision for appeal to the country and even casual vacancies were filled by nomination[1] [(a)].

The personnel of the Constituent Assembly comprised an overwhelming Muslim League majority and an opposition made up of representatives of the substantial Hindu community of East Bengal who, as members of the Legislature of the former undivided Bengal, were members of the Indian National Congress. By its very nature, this opposition was compelled to act as much with circumspection as with vigour, especially during those times when relations between India and Pakistan were unduly strained. At the same time, it is but fair to add that in Assembly proceedings the opposition has been given its due share in the work of the Assembly. The Muslim League membership did in fact constitute an oligarchy which, probably because the incorruptible and

[1] (a) See motion adopted by the Pakistan Constituent Assembly on 31 March, 1950.

skilful hand of Mr. Jinnah was prematurely removed, underwent the deterioration which is the inevitable consequence of power too long enjoyed and liable to no challenge. No doubt, the membership of the Constituent Assembly included many who laboured hard both in the cause of independence and a homeland for the Muslims of the sub-continent, but they proved unable to solve the problem of the constitution.

In certain cases, it can hardly be doubted that the apparently indefinite prolongation of the life of the Constituent Assembly was a welcome matter by reason of the influence membership conferred and the advantageous prospects offered. The behaviour of some of the members was no better than that of the money-changers in the temple, but as the first Constituent Assembly has been dissolved nothing useful is likely to be gained in pursuing here this unhappy aspect.

There remain to be considered those two important circumstances which have so greatly complicated the constitutional problem, and in order to understand how they have exerted so much influence upon the history of Pakistan, it is first necessary to know the salient facts concerning them.

The western wing of Pakistan has an area of 310,236 square miles and a population of approximately 33,779,000 persons, giving a density of 109 persons to the square mile. In fact, the density varies considerably, being as much as 259 persons to the square mile in West Punjab and as little as 8·8 persons to the square mile in the vast and arid tracts of Baluchistan. East Pakistan has an area of 54,501 square miles and a population of 42,063,000 giving a density of 777 persons to the square mile, but in some parts, the density of the population rises to as much as 1,200 persons to the square mile. It is also a point of some political significance that Pakistan's Hindu population is mainly concentrated in East Pakistan and amounts to about 10,000,000 or one-fourth of the total population of the eastern wing.

West Pakistan has a dry climate with a wide range of temperatures. Its people depend for their existence and livelihood on a huge irrigation system. In this area, foodgrains, cotton, sugar-cane, and market garden produce are grown along with wool and hides. West Pakistan's most valuable cash crop is cotton forming about 3-1/2 per cent of the world's total production. East Pakistan, which comprises the Province of East Bengal only, has an entirely different climate which is rainy and tropical.

A network of rivers provides the most convenient means of transport of the important jute and tea crops of this wing.[1(b)]

These points of difference tend, among other things, to create an economic disequilibrium which is accentuated by the difference in the adjacent Indian territory in each instance. West Pakistan, for the most part, borders on the Indian desert and it is only in the Punjab that there is room for mutual trade and economic activity. Even then, the Indian Punjab is not by any means the most important area in India for the purposes of trade and industry. The Indian territory adjacent to East Pakistan, on the other hand, includes Calcutta, one of the biggest and most important cities in the world. The wealth of Calcutta exerts a magnetism which sometimes attracts eyes in East Pakistan. The peculiar nature of these border conditions has created a situation which could not be ignored and Pakistan has been compelled to adopt measures to overcome the difficulties it imposes[2]. It has been necessary to distinguish between imports of foreign manufactured goods intended for East Pakistan and those intended for West Pakistan and the free flow of such goods between the two wings has been the subject of restriction. Although it is lawful in Pakistan to possess and own unwrought or unmanufactured gold, it has been unlawful, since 22 September, 1954 to transport such gold from West to East Pakistan except with the permission of the State Bank of Pakistan. Eventually the Customs Authorities in Karachi introduced such measures of control on air-cargo from West to East Pakistan that a general complaint was made by the public and the Ministry of Finance cancelled the orders made by the Collector of Customs.

To all of these differences there must be added one more, namely, that of language. In East Pakistan, the language most commonly used is Bengali; in West Pakistan, while most people know Urdu more or less, they speak Pushto, Punjabi, Sindhi, Gujerati, Baluchi, and Urdu according to district and community.

It is not difficult to understand that, unless there exists a great and inviolable spirit of homogeneity and national patriotism which over-rides local ties and sentiments, these geographical circumstances are likely to create problems of a profound and far-reaching character. As we shall see later, the indications are that this spirit

[1](b) Data taken from privately circulated Explanatory Memorandum on the Budget 1955-56 and Economic Survey for 1954 prepared by the Ministry of Finance, Government of Pakistan.

[2]See *Dawn*, Karachi, 13 May, 1955.

has until now been neither sufficiently widespread nor sufficiently strong. In a statement made in Dacca as late as 22 July, 1955, a prominent East Bengal politician accused some of his East Bengal rivals of not possessing a true conception of Pakistan[1]. The difficulties implicit in such a division of the country were realised at a very early stage and, during the negotiations conducted by Lord Mountbatten, Mr. Jinnah demanded a corridor, some eight hundred miles in length, to connect East and West Pakistan. This demand, as might be expected, was not agreed to but it sounded many an alarm in Delhi and elsewhere during May, 1947.[2]

Pakistan had not long been in existence when east-west problems began to reveal themselves. Broadcasting from Dacca on 28 March, 1948, Mr. Jinnah said: "I am sure you must realise that in a newly-formed State like Pakistan....cohesion and solidarity among its citizens....is essential for its progress, nay, for its very survival....That is why I want you to be on your guard against this poison of provincialism that our enemies wish to inject into our State". The suggestion here was that opponents and ill-wishers of Pakistan were seeking to create disruption by exploiting such differences and incompatibilities as might exist between the east and west wings of the country, and thereby break up the new Dominion.

Most political leaders of the country, following Mr. Jinnah's example, have tried, in their public utterances, to create a sentiment of brotherhood and confidence among the peoples of East and West Pakistan, but it is less certain that all of those leaders have observed the same rectitude in their private dealings, whether political or other. In more practical respects, fairly determined efforts have been made to promote the unity which is an indispensable condition to Pakistan's progress. Financial provision has been reserved in the national Budget for the promotion of activities such as will bring the two wings of the country together in spirit and in outlook. The national airline of Pakistan carries passengers to and from each wing at fares which are said to be uneconomic, but which have been reduced as much as possible in order to encourage inter-wing travel and activity. The authorities have gone to considerable pains to ensure that because the seat of the Central Government is at Karachi, the east wing shall not suffer in matters of finance and trade, and special import arrangements have been devised to make it certain that mere considerations of

[1] *The Times of Karachi*, Karachi, 23 July, 1955.

[2] See Alan Campbell Johnson, *Mission with Mountbatten*, Robert Hale, London, 1951, pp. 94-6.

private profit shall not interfere with the flow of essential foreign manufactures to each wing, according to its needs. A notable and praiseworthy effort to establish further good feeling was undertaken by West Pakistan at the time of the appalling floods in East Bengal in 1954 when the people of West Pakistan contributed most generously with money and help in many other forms.

Despite all that has been done, the process of developing mutual understanding and regard has been slow and difficult. An analysis of the position written in July, 1955, states: "Here in Dacca (the capital of the east wing) one feels that Karachi is so far away. 'We move in another world' a non-Bengali journalist said here the other day. . . . News from West Pakistan in Dacca papers is scanty. . The teleprinter link between Karachi and Dacca is down most of the time. Press telegrams from West Pakistan take at least four or five hours to reach here, and. . . . remember that East Bengal is an hour ahead of West Pakistan. It is to be earnestly wished by all who want to strengthen the ties between the two wings that there should be a reliable cable or teleprinter link between East Bengal and West Pakistan. The importance of such a link cannot be over-emphasised. People here feel cut off"[1]. The result is that it has not yet been possible to exorcise the demon of inter-provincial rivalry in its more destructive manifestations which have taken diverse shapes.

Since the population of East Bengal exceeds that of West Pakistan by approximately ten million people, the assumption would be, on the basis of normal democratic practice, that East Bengal should have more seats in the national legislature. In such a circumstance, it would be possible for East Bengal members, united solely by considerations of a local provincial patriotism, to rule the entire country for ever. It can scarcely be doubted that apprehensions of this sort have operated in the minds of people in West Pakistan[2]. Thus a difficult situation is created at the outset, since East Bengal feels itself entitled to more than an equal share in the seats in the Central Legislature and West Pakistan fears a perpetual domination by East Bengal. These assumptions ignore the possibility that agricultural and industrial development is possible in West Pakistan to a degree which, so far as agriculture at any rate is concerned, is not possible in East Bengal and will tend to close the population gap. Secondly, East Bengal parties are not as solid as might appear and as would be indispensable to achieve the suspected hegemony. Thirdly, all provincial considerations may be

[1] *The Times of Karachi*, Karachi, 15 July, 1955.

[2] See Prime Minister's speech to Pakistan Constituent Assembly, 7 October, 1953.

cut across by the emergence of new national political parties coming forward with new policies and programmes. The Muslim League itself is a broadly based national party and Mr. H. S. Suhrawardy's Awami League was similarly conceived at the time of its formation.

With respect to certain financial and administrative matters, there has been controversy. On the one side, East Pakistan claims that with its exports of jute and tea, it makes a greater contribution to the foreign exchange earnings of the entire country than does West Pakistan. An examination of the export figures on private account during the years 1951-54 lends some, but not conclusive support to this claim. On the other side, West Pakistan relies on the argument that because East Pakistan is not self-supporting in the matter of food, its people would starve were it not for the special help given from the national exchequer at West Pakistan's expense. Because Karachi is the capital of Pakistan, there is a tendency to suspect that East Bengal is constantly overlooked in all national calculations, and especially in the matter of appointment of personnel to important posts in the administrative services of the country. A further obstacle to assimilation and understanding is the reluctance of employed people, officials and others, born in West Pakistan to serve in East Pakistan and *vice versa.*

The East-West problem has tended, in its more publicised aspects, to crystallise itself around the controversy as to the national language, and on this issue there has been a good deal of animated argument. It has been said earlier that in West Pakistan, the inhabitants speak differing languages according to the district from which they come. The common language among all of them, especially among educated people, is Urdu.

Urdu is a language which developed in the sub-continent as a result of a series of invasions by Persian-speaking Muslims beginning in the eleventh century A.D. The accidence and syntax of the language are derived from Hindi, but the vocabulary is mainly Persian and Arabic. In the course of its development, the language acquired the name of "Rekhti", and later, in the time of the Moghul Emperor Shah Jehan, the name "Urdu" signifying a military camp and hence, the language of soldiers[1]. Urdu is usually written in Persi-Arabic characters and while it is not the monopoly of Muslims (many Hindus in Northern India regard Urdu as their language also despite the present encouragement of Hindi) it has strong Muslim associations, and particularly, it is

[1] See H. M. Matin, *National Language for Pakistan*, Marsh Publishing House, Karachi, 1954, p. 197 *et seq.*

linked with the glories of the Moghul era and the Muslim nobility that grew up around such centres as Delhi, Lucknow, and in the Deccan. To speak and write Urdu well is considered, particularly among Muslims of the sub-continent, to be as much a polished accomplishment as is a fluent knowledge of French so considered by many English people. When spoken well, Urdu is a most agreeable language to hear and it possesses a fine literature.

The Bengali language derives from the Prakrit[1] that spread from Magadh in Bihar, and Bengali begins to emerge as a language of its own about 900 A.D.[2] Since Bengal became deeply subject to Muslim influences from the time that Islam spread to that part of the sub-continent, it was but reasonable to find the language becoming influenced in a similar way. Nevertheless, Bengali continues to be written in a form clearly derived from the devanagri characters of Sanscrit and the language is not intelligible to a Pakistani who speaks only Urdu or any of the other languages of West Pakistan to which reference has earlier been made. Finally, it must be added that Bengali likewise possesses an admirable literature including the works of Nazrul Islam, one of the most vigorous Muslim poets of the present century.

It is also relevant to notice that the number of people living in West Pakistan, who were not born in East Bengal, and yet speak Bengali is negligible. Among the people of East Bengal, the rural population does not speak Urdu at all, but in the cities educated men and women and those who come from families belonging to or associated with the old Moghul nobility, speak and use Urdu as their language. This situation is supported by the fact that in West Pakistan there is not a single periodical published in the Bengali language whereas in East Bengal seven journals are published in Urdu, of which three are daily papers.[3]

There seems to be no doubt that, at the outset, the understanding among the Muslim League leaders was that Urdu would be the national language of Pakistan. On this point, Mr. Jinnah gave very clear expression as to the intentions of the Government. Speaking at Dacca on 24 March, 1948, he said: "Let me tell you in the clearest language that there is no truth that your normal life is going to be touched or disturbed so far as your Bengali language

[1]A Prakrit is a popular derivation from Sanscrit much as the Romance languages derive from Latin.

[2]*National Language for Pakistan*, op. cit. p. 147 *et seq.*

[3]This analysis has been made from official sources of information. It shows the position in October, 1954 and changes since then have been negligible.

is concerned. But, ultimately, it is for you, the people of this Province, to decide what shall be the language of your Province. But let me make it very clear to you that the State language of Pakistan is going to be Urdu and no other language. . . . But as I have said, it will come in time". On the same day, he also addressed the Convocation of Dacca University when he said: "For official use in this (East Bengal) Province, the people of the Province can choose any language they wish. This question will be decided solely in accordance with the wishes of the people of this Province alone as freely expressed through their accredited representatives, at the appropriate time and after full and dispassionate consideration. There can, however, be only one lingua franca. . . . and that language should be Urdu".

In spite of all this, the people of East Bengal remained dissatisfied over the language question and after the dominating personality of Mr. Jinnah was removed by his death, discontent became both audible and visible. Efforts at assimilation were made by developing and encouraging the increased use or at least increased knowledge of Urdu in East Bengal. In the early days, the Provincial Government issued an order that in schools where Urdu was the medium of instruction, Bengali must be taught as a compulsory subject and, similarly, where Bengali was the medium of instruction, Urdu must be taught as a compulsory subject. The effect of this order touches the question of instruction in Urdu far more than Bengali since there are many more schools where Bengali is the language in normal use. It is said that in Urdu-medium schools, the order to teach Bengali has been honoured more in the breach than in the observance.[1] If this is so, to those in East Bengal with strong views on the language question, it has given further ground for complaint. In any case, when Mr. A. K. Fazlul Huq's party, after defeating the Muslim League (in collaboration with the Awami League with which party differences later developed) took office in 1955[2], the language order in question was withdrawn, much to the indignation of those who favour Urdu.[3] The decision to withdraw this order, it has been said, may be revised when Bengali is made one of the State languages of Pakistan which seems a fairly clear indication of the mistrust, as well as strong feeling, which have existed with reference to the problem of the national language.[4]

[1] *The Times of Karachi*, Karachi, 24 July, 1955.

[2] The interregnum was a period of Governor's rule, without the aid of a Cabinet of Ministers, under Section 92A of the Government of India Act, 1935.

[3] See, *e.g.* statement by the Vice-President of the Jamiat-i-Ulema-i-Islam, *The Times of Karachi*, Karachi, 16 July, 1955.

[4] *Ibid.* 24 July, 1955.

The gravity of this problem, as events were later to show, led to difficulties and it has been suggested in more than one quarter and on more than one occasion that Pakistan should adopt Arabic as its national language. The suggestion (despite its obvious difficulties) has been made not merely because of the controversy concerning Urdu and Bengali, but also because Arabic has a special claim to the regard of all Muslims. It is the language in which the *Quran* is written and it is still a living language. Furthermore, if Arabic were, for these reasons, adopted by other Muslim but non-Arabic speaking countries, a great Muslim-linguistic *bloc* would be created.[1]

These then, are some points of difference between the east and west wings which have combined to provide one of the principal obstacles to the writing of a constitution and from this we may now turn to the question of Islam in relation to this newly created Muslim country.

Pakistan calls itself a "Muslim country", and it does so for two reasons. Firstly, 85·8 per cent of the population confess Islam as their religion and, secondly, Pakistan was created in order to provide a homeland for the Muslims of the sub-continent of India where the religious, cultural, economic, political, administrative and other rights of Muslims would be secure and capable of development.

The problem with which we are now concerned is whether such a country should be, or must be, an "Islamic State" and the difficulties to which this problem has given rise in relation to the constitution, turn on the conflict of opinion within Pakistan as to the extent and manner in which the constitution should be framed and the country governed upon the basis of the tenets of Islam.

The learned authors on the Report on the Punjab Disturbances[2] stated that if Pakistan is to be converted into an Islamic State in the true sense of those words, the constitution must contain the following provisions. All laws to be found in the *Quran*[3] or the *sunna*[4] shall be deemed to be part of the law of the land for

[1]See *National Language for Pakistan* op. cit. p. 337 *et seq.*, and a statement by the East Pakistan Provincial Education Minister, *Evening Star*, Karachi 16 July, 1955.

[2]Report of the Court of Inquiry to enquire into the Punjab Disturbances of 1953, Lahore, 1954.

[3]The Holy Word revealed to the Prophet Mahomed by the Almighty.

[4]A word implying right conduct according to the precept or example of the Prophet Mahomed.

Muslims. Secondly, unless the constitution is itself framed by agreement among those learned in Islam and Islamic law, any provision of the constitution which is repugnant to the *Quran* or the *sunna* shall, to that extent, be void and likewise, existing laws will be void if similarly repugnant, in the absence of agreement among those learned in Islam or Islamic law. Thirdly, future laws which are similarly repugnant shall be void and any rule of International Law and the provision of any Treaty or Convention to which Pakistan is a party and which is repugnant to the *Quran* or the *sunna* shall not be binding on any Muslim in Pakistan.[1]

To begin with, it may be said that a study of the Lahore Resolution adopted by the Muslim League in 1940 in which the demand for an autonomous and sovereign homeland for the Muslims of India was made, for the first time, does not reveal any emphasis on the adoption of an Islamic constitution. In fact, the expression "Islamic State" is not even mentioned in that Resolution which calls only for autonomy and sovereignty for Muslim-majority areas where religious, cultural, economic, and other interests of Muslims would be adequately safeguarded. Nevertheless, the problem has come forward since the creation of Pakistan and it has greatly absorbed the energies and attention of many people. For the purposes of the present chapter, it is touched upon briefly in order to indicate its nature and existence as an obstacle contributing to Pakistan's constitutional difficulties. For this reason, some historical reference, especially to the views of those mostly responsible for Pakistan's emergence, is necessary.

Dr. Mohammed Iqbal, the famous poet and philosopher, who first conceived the possibility of a Muslim State in the sub-continent, said, in 1930, when addressing the Muslim League as its President: "Nor should the Hindus fear that the creation of autonomous Muslim States will mean the introduction of a kind of religious rule in such States". An examination of Mr. Jinnah's speeches will show that while they abound in references to the preservation of the religion of Muslims, their culture, way of life, their economic interests and their separateness from Hindus, references to an Islamic State are so sparse as to be almost entirely lacking. It is doubtless correct that on such occasions as the festivity which marks the end of the holy month of Ramzan, Mr. Jinnah would issue messages to his followers which referred to Islamic principles and belief, but it is otherwise difficult to find in his speeches and writings any great preoccupation with devotional subjects. As we shall later discover, it was Mr. Jinnah's view that religion is the personal affair of each citizen.

[1]Punjab Inquiry Report, op. cit. pp. 209 and 210.

In the course of an interview with Reuter's correspondent, given in New Delhi, Mr. Jinnah said that Pakistan would be a modern, democratic State, with sovereignty resting in the people, and that the members of the new nation would have equal rights of citizenship regardless of religion caste, or creed. On 11 August, 1947, only three days before Pakistan came into its legal existence, Mr. Jinnah made a speech to the Constituent Assembly of the new Dominion in which he urged that all communities in the country should work and co-operate together, irrespective of community, caste, and creed. He then stated that each individual of Pakistan would be a citizen of the State with equal rights, privileges, and obligations. He suggested that in course of time. Hindus would cease to be Hindus and Muslims would cease to be Muslims, not in the religious sense, but in the political sense as citizens of the State. From all of this, it is possible to deduce that the founder of Pakistan envisaged a modern, secular State whose purpose was to provide a secure homeland for Muslims without being detrimental in any way to the members of other communities who accepted citizenship of that State.

It is perhaps fair to add that in a letter written in November, 1945, to the Pir Sahib of Manki Sharif, a religious leader of the North West Frontier Province, who counts his followers in thousands and who exercises considerable influence, Mr. Jinnah said: "It is needless to emphasise that the Constituent Assembly which would be predominantly Muslim in its composition, would be able to enact laws for Muslims, not inconsistent with the *Shariat* laws[1] and the Muslims will no longer be obliged to abide by un-Islamic laws."[2]

This phraseology cannot entirely be absolved of the charge of ambiguity, but there is, in any case, other evidence on the matter. Khwaja Nazimuddin, a prominent worker for Pakistan who, after Mr. Jinnah's death became its Governor-General and later Prime Minister, stated that Mr. Jinnah himself preserved the ideal of an Islamic Constitution and that it was on this assurance that Pakistan had been achieved[3]. This view could, perhaps, be justified by Mr. Jinnah's statement that Islam and Hinduism are not religions in the strict sense of the word but are, in fact, different and distinct social orders[4]. This deduction, while possible, is

[1]*Shariat* signifies the personal law applicable to Muslims.

[2]Quoted by the late Maulana Shabbir Ahmed Usmani when addressing the Constituent Assembly of Pakistan. Constituent Assembly Debates, Vol. 5, No. 3.

[3]Punjab Inquiry Report, op. cit. p. 259.

[4]See Mr. Jinnah's Presidential Address at the All-India Muslim League, Lahore Session, March, 1940.

nevertheless doubtful especially in view of Khwaja Nazimuddin's personal beliefs and, in any event, Khwaja Nazimuddin stated that a single nation, consisting of Muslims and non-Muslims with equal rights of citizenship was not his view of an Islamic State[1].

From the beginning, therefore, there seems to have been conflict or, at any rate, misunderstanding as to the form which the Pakistan constitution should take with reference to matters of religion. A political situation of this kind is not exceptional although it may be damaging. Among the leaders of any political organisation in any nation, there may be acute differences as to the precise meaning and application of the party principles and programme and these differences, especially when accentuated by personal ambition may even lead to internal disruption or worse, of which no better example exists than Stalin's disputes with Trotsky and Trotsky's final exile from Russia.

That there is a body of opinion in Pakistan, from some highly placed men down to simple farm-labourers, which favours and believes in the desirability of an Islamic constitution is undeniable. In the Indian Republic there are organisations which seek to go back to the Vedas and create a constitution based on Ram Raj[2] and in other countries, there are religiously-minded people who believe in the necessity for a strong ecclesiastical element in public life, as in the days when the Lord Chancellor of England was a priest.

If the matter, so far as Pakistan is concerned, could be said to end there, then, as a constitutional problem, it would be simple, although the incidents might be complex. The choice would be: "Strict Islamic constitution or not?" If sufficient people in Pakistan desired the former, then, irrespective of the views which others may elsewhere hold on such a matter and irrespective of the consequences upon those who live in Pakistan and are not Muslims, presumably, in accordance with the principles of self-determination and the rule of the majority, the people of Pakistan would be entitled to such a constitution and it is not open to others to complain about it.

Unfortunately, the matter does not end there, since Islam distinguishes clearly between Muslims and non-Muslims and their respective rights and duties in the State. In an Islamic State,

[1]Punjab Inquiry Report, p. 259.

[2]The phrase signifies the "reign of God" according to Brahminical teaching.

non-Muslims are either *zimmis*, that is, non-Muslim inhabitants of a country conquered by Muslims, or *mu'ahids*, that is, non-Muslim minorities living in an Islamic state with whom some agreement has been made. These non-Muslims cannot enjoy rights of citizenship, although they may enjoy the right of protection by the state, the right to exercise their respective trades and callings, and the right to their own form of worship and personal law. It follows from this that in an Islamic State the first task is to define who is a Muslim and who is not.

It has been established that on this point alone there exists, is Pakistan, and among those who have expressed the desire for an Islamic constitution, the widest variety of opinion. When leading *ulema*[1] were questioned as to what a Muslim is, each of them gave an answer differing from the rest.[2] It is also worth mentioning that certain organisations which are vehemently Islamic in religious conviction were nevertheless against the idea of an Islamic State and one of the ablest of the *ulema* in Pakistan, Maulana Abul Ala Maudoodi, held that the form of government in the new Muslim State, if it ever came into existence, could only be secular.[3]

It has been said that the incidents of an Islamic State would be likely to provide difficulties and some of them may be mentioned by way of illustration. In such a State, the taking of interest on money lent, prostitution, and the drinking of alcohol would, among other things, be prohibited. The cinema would probably be illegal in view of the law concerning idolatry and false images, sculpture would certainly be so; and so would music and dancing. There is no *a priori* ground for asserting that Pakistan would be any the worse off if it were denied the technicolour confections of the western world, but the possibility that the music of Mozart or Brahms might never again be heard must, for some, be a solemn thought.

The Muslim population of the world today, is in the order of 350 million people, spread over a number of countries in some of which the Muslims are in a majority and in others not. Speaking in Lahore on 30 August, 1953, the one-time Chief Minister of the Punjab Provincial Government said: "Today, Pakistan is the only country in the world which seeks to claim Islamic Government".

[1] *Ulema* is the plural of *allama* which means a person learned in Islam.

[2] Punjab Inquiry Report, op. cit. p. 214 *et seq*. This Inquiry was presided over by the present Chief Justice of Pakistan and the Report is a mine of valuable and accurately stated information.

[3] *Ibid*. p. 201.

Although he was then speaking in another context, the statement gives a fair notion of the immense difficulty and abstruse complexity of creating an Islamic constitution.

As between those who seek an Islamic constitution on the lines suggested by Khwaja Nazimuddin, and those who would be content with Mr. Jinnah's modern, democratic State, there continue to exist many shades of opinion. In a series of speeches made in the United States of America in May and June, 1950, Mr. Liaquat Ali Khan, at that time Prime Minister of Pakistan, explained that Pakistan was to be built up as an Islamic State which did not mean theocracy but freedom of conscience for all and an emphasis on Islamic equality, with social as well as economic justice[1]. Mr. Jinnah, in an interview given to a representative of the Associated Press of American on 8 November 1945, expressed the personal hope that in the Pakistan-to-be the major industrial and public utility services would be socialised and he gave it as his belief that essential key industries should be controlled and managed by the State[2]. Similar in tone are the suggestions that the constitution and policies of Pakistan should be conceived in accordance with a doctrine which has been termed "Islamic socialism".[3] These attitudes are in some respects consonant with the view, frequently stressed, that Islam provides a middle way between capitalism and communism, avoiding the evils of both[4].

With this brief view of two complex matters which have been the source of much difficulty and conflict of opinion in Pakistan, it is possible to turn to the course of events, from the time that efforts to solve the problem of writing the constitution first came to be made.

[1] See *Pakistan—The Heart of Asia*. Speeches by the late Mr. Liaquat Ali Khan in U. S. A. and Canada, May and June, 1950, Harvard University Press, Cambridge, Mass. U.S.A.

[2] Speeches and Writings of Mr. Jinnah, op. cit. Vol. II, pp. 429 and 431.

[3] See, e.g., M. Fazlur Rahman, *New Education in the Making in Pakistan*, Cassell & Co. Ltd. London, 1953, pp. 89-92.

[4] See Pakistan Constituent Assembly Debates, Vol. 5, No. 3, p. 47 and No. 4, p. 62.

CHAPTER III.

FIRST STEPS AND THE OBJECTIVES RESOLUTION.

Although Pakistan was created in August, 1947, and a Constituent Assembly was simultaneously formed, there were, as the world well knows, adequate reasons for the initial delays in providing the country with a constitution with which to replace its interim organisation. It is not necessary to repeat here the record of the monstrous holocausts accompanying the migrations to and from West Pakistan, nor the account of the immense difficulties of administration which impeded all efforts to set up a Central Government in Karachi. To the problems of transport, housing, provision of elementary needs both in the home and in the office, there were added the critical disputes with India, including not only the quarrel over Kashmir, but even the settlement of Pakistan's claim to immediate payment of the agreed and due share of cash balances without which it would have been difficult, perhaps impossible, to carry on the public administration. This problem alone was so acrimoniously pursued that the insistence of Mahatma Gandhi, which caused the Indian Government eventually to honour its obligation, was a direct circumstance leading to his assassination.

Nevertheless, in August, 1947, a Committee was set up to advise on the fundamental rights of the citizens of Pakistan and on matters relating to minority communities comprising Hindus, Scheduled Castes, Buddhists, Christians, Parsees, and Jews. The purpose of this Committee was to collect information on the question of communities within Pakistan in greater detail than would be possible for the Assembly as a whole to do, and, in order to make the work of the Committee more effective, power was given to co-opt not more than seven persons, not being members of the Assembly, who could represent the views of minority communities not represented in the House[1].

An Interim Report of this Committee, adopted by the Constituent Assembly on 6 October, 1952, touched upon the question of Pakistan citizenship and the fundamental rights of all citizens irrespective of religion, race, caste and colour. The final Report of this Committee, which contained the important recommendation that certain minority communities should be represented in the

[1] Constituent Assembly Debates, Vol. 1, No. 3.

Central and Unit Legislatures of Pakistan by persons elected through separate electorates, was presented in May 1952, the three Hindu members of the Committee having signed the Report subject to notes of dissent touching upon the question of separate electorates. This final Report was not adopted by the Constituent Assembly until 7 September, 1954 and then only after considerable amendment in which the provision as to separate electorates was deleted but not forgotten, as will be seen.

Meanwhile, in September, 1948, Mr. Jinnah died, an event which undoubtedly shook the national confidence for a time, and it was not until March, 1949 that the Objectives Resolution was proposed to the Constituent Assembly by the then Prime Minister, the late Mr. Liaquat Ali Khan[1].

This Resolution was stated by the Prime Minister to embody the main principles on which the constitution of Pakistan was to be based.[2] It begins with the customary Islamic invocation to the Almighty: "In the name of Allah, the Beneficent, the Merciful"; and proceeds to recite that sovereignty over the entire universe belongs to God and that the authority delegated by Him to the people of Pakistan is a sacred trust. The Resolution provides that the principles of democracy, freedom, equality, and social justice as enunciated by Islam shall be fully observed and that Muslims shall be enabled to order their lives in accordance with the teachings and requirements of Islam. Mention is made of the rights of minorities freely to profess and practise their religions and develop their cultures. The Resolution provides that fundamental rights as to status, opportunity, equality before the law, economic, social and political justice, freedom of thought, worship, and expression shall be guaranteed to all. The Resolution provides also for the independence of the judiciary and for the organisation of the State as a Federation.

Discussion of the Objectives Resolution occupied five successive meetings of the Assembly, and in reply to the objection that the Resolution was not necessary, the Prime Minister said that in his opinion the Resolution was absolutely necessary and he gave the reason that "before this House starts framing the future constitution of Pakistan, the members should have some idea as to what sort of constitution and what type of constitution they want to frame."[3]

[1]The Objectives Resolution is set out in full at Appendix A.
[2]Constituent Assembly Debates Vol. 5, No. 1, p. 1.
[3]*Ibid.* p. 10.

It has been said earlier in this book that an examination of Mr. Jinnah's speeches would not reveal any outstanding insistence upon Islam with reference to the constitution, but the Prime Minister, in his speech proposing the adoption of the Objectives Resolution suggested, without precisely saying so in as many words, that Mr. Jinnah had in fact on many occasions given expression to the feeling that Pakistan would be founded to enable Muslims of the sub-continent to "build up their lives in accordance with the teachings and traditions of Islam"[1]. Later, however, in the same speech, the Prime Minister indicated that this view as to Islam was equated with Mr. Jinnah's more familiar observation as to the desire of Muslims in the sub-continent to make secure their own way of life and code of conduct[2].

The debate on the Objectives Resolution was interesting and its level high. The Muslim speakers, who uniformly supported the Resolution drew upon considerable funds of Islamic learning to justify their views and the opposition speakers, all of whom were Hindus from East Bengal, revealed an acuteness of thought such as might be expected of them. Nevertheless, so far as the Muslim speakers were concerned, they could not conceal the confusion, even contradictions in their thinking, and if this provided testimony to individual sincerity, at the same time it offered no great assurance of an easy passage for the draft constitution, Islamic or any other. For example, when addressing the Constituent Assembly on 11 August, 1947, Mr. Jinnah clearly expressed the view that Muslims might cease to be Muslims in the political sense. During the debate on the Objectives Resolution, however, the late Sheikh-ul-Islam Maulana Shabbir Ahmed Usmani reminded the Assembly that: "Islam has never accepted the view that religion is a private affair between man and his Creator and as such has no bearing upon the social or political relations of human beings".[3]

During the debate, opponents of the Resolution did, in fact, draw attention to inconsistencies of this kind and a reply was made to the point, on behalf of the Government, by Sardar Abdur Rab Nishtar to the effect that nothing was being done, or proposed to be done, that was contrary to the declarations of Mr. Jinnah. Sardar Abdur Rab Nishtar also explained that even if Mr. Jinnah had given pledges to the minority communities, he had also given pledges to the majority and the Objectives Resolution was intended to redeem pledges to the majority as well as to the minorities.[4]

[1] *Ibid.* p. 2.
[2] *Ibid.* p. 4.
[3] *Ibid.* No. 3, p. 44.
[4] *Ibid.* No. 4, p. 62.

Opposition to the Resolution tended to settle mainly around the point that its effect, and the effect of a constitution drafted to secure the Objectives stated, would be to divide the people into two classes, described by one speaker as "Patricians" and "Plebians".[1] In reply to this, members of the minority communities were asked to accept solemn assurances that such a situation was not inherent in the proposals of the Objectives Resolution and that the safeguarding of the rights of other communities was an explicit duty imposed by Islam.[2]

In the result, the Resolution was adopted and immediately after, the further motion was moved in the House by the Prime Minister of which the purport was to appoint a Committee charged with the duty of reporting, as early as possible, in accordance with the Objectives Resolution, on the main principles on which the constitution of Pakistan was to be framed.[3] No speech in aid of this motion was made by the Prime Minister who suggested that its purpose was quite clear. Having adopted a resolution on aims and objects, the proposal to set up a Committee to determine main principles seemed to indicate that in the matter of drafting a constitution, Pakistan was proceeding with the greatest deliberation. However that may be, the motion was adopted without dissent.

The Objectives Resolution was received with wide acclaim in Pakistan and the spate of congratulatory telegrams, customary on such occasions, was received by the Prime Minister and others associated with him in the adoption of the motion. From time to time since, the Objectives Resolution has been appealed to as determining the foundations upon which the constitution of Pakistan should be constructed. Nevertheless, the Resolution had curious, and perhaps unexpected, consequences. Some people thought that its effect was to set aside, or render obsolete, Mr. Jinnah's conception of a modern, national State as suggested in his speech to the Constituent Assembly on 11 August, 1947.[4] Many others have said that the Objectives Resolution was nothing but a hoax expressed in grandiloquent words and phrases which "does not contain even a semblance of the embryo of an Islamic State" and whose provisions "particularly those relating to fundamental rights, are directly opposed to the principlies of an Islamic State".[5]

[1] *Ibid.* No. 3, p. 27.

[2] See, *e.g.*, speech of Dr. I. H. Qureshi in support of the Resolution. *Ibid.* No. 3, p. 38 et seq.

[3] *Ibid.* No. 5 p. 101.

[4] Punjab Inquiry Report, op. cit. p. 320.

[5] *Ibid.*

Chapter IV.

EAST BENGAL—WEST PUNJAB.

An Interim Report of the Basic Principles Committee appointed, as we have seen, in March, 1949, is dated 7 September, 1950, and it was presented to the Constituent Assembly on 21 November in the same year. It is frankly an incomplete document, and the then Prime Minister, Mr. Liaquat Ali Khan, moved that the Interim Report should not be taken into consideration during that session of the Assembly and that an opportunity should be given to enable the Committee to consider any concrete and definite proposals, conforming to the Objective Resolutions that members of the public might care to send before 31 January, 1951.[1]

The reasons given for the proposed postponement of consideration were that, since the Interim Report had been published, a great deal of comment had been made in the Press and from public platforms. The Prime Minister went on to say that this comment could be divided into that based on ignorance and inadequate appreciation of the recommendations contained in the Report, that intended to mislead the people and create confusion and that made with a genuine desire to see that the country's constitution should be based on the principles laid down in the Objectives Resolution[2].

During this debate, a Muslim member of the House, from East Bengal, rose to say that the Interim Report had succeeded in arousing grave, although erroneous, apprehensions in East Pakistan. According to this member, there was a growing belief that the Interim Report contained principles which, if adopted, would reduce the majority population of East Bengal into a minority and would turn East Bengal into a colony of Pakistan. The same member said that some people considered the Report to be undemocratic, un-Islamic and reactionary and that provincial autonomy would disappear, leaving a unitary Central Government[3]. Another member from East Pakistan said that the Interim Report had been widely resented all over Pakistan, in the western as well as in the eastern wing[4]. These were some of the reasons given by

[1]Constituent Assembly Debates, Vol. VIII, No. 6, p. 181.
[2]*Ibid.*
[3]*Ibid.* p. 183.
[4]*Ibid.* p. 182.

members for supporting the Prime Minister's motion. At the same time, it is impossible not to recognise in them the first rumblings of a storm that was to overtake Pakistan with reference to the problem of devising a constitution that would satisfy the entire country.

Progress in the work of the Basic Principles Committee continued to be slow, and before any further tangible results could be laid before the House, Mr. Liaquat Ali Khan was assassinated at Rawalpindi by an Afghan political refugee, one Said Akbar, a crime said to have been inspired by undue and misplaced religious fervour.

In the place of Mr. Liaquat Ali Khan, Khwaja Nazimuddin stepped down from the office of Governor-General, in which he was replaced by Mr. Ghulam Mohammed, and undertook the onerous tasks of Prime Ministership. On this occasion, Choudhary Mohammed Ali, Secretary-General to the Government and a permanent official, resigned from the service and became Minister of Finance in the place of Mr. Ghulam Mohamed. This unusual, but certainly not unprecedented method of allotting the vacant portfolio, was to acquire added significance later.

Khwaja Nazimuddin is, by ancestry, a Kashmiri and by birth a Bengali. He belongs to what would be called and, in his case, with justice, a noble family. He entered politics many years ago and in earlier days held high office in the undivided Province of Bengal. The Report of the Punjab Inquiry Commission, before which Khwaja Nazimuddin was later to give evidence and be cross-examined by counsel, gives a clear picture of his character and attitude to the problems of his country. The Report describes him as a man of deep and sincere religious convictions[1] and as a man too honourable to resort to tricks, although, it was added, in politics the man is not infrequently lost in the politician[2]. He was said to be inspired by sincerity of purpose[3], but because of his religious approach, he was intensely afraid of a head-on clash with the *ulema*[4].

This was the man upon whom descended, among other things, the duty of providing Pakistan with its constitution and this duty, to quote the Punjab Inquiry Report again, was ultimately to confront him with a peculiarly difficult and personal problem[5].

[1]p. 264.
[2]p. 282.
[3]p. 287.
[4]*Ibid.*
[5]p. 282.

Unhappily, this was not the only difficulty that came in the way of Khwaja Nazimuddin. Within six months of assuming office as Prime Minister, economic circumstances in Pakistan deteriorated gravely and measures, considered by many to have been ill-conceived as well as inadequate, were taken to correct a situation that grew more adverse each day. There was also growing a serious internal problem, religious in character which became a matter of almost daily distraction and perturbation for Khwaja Nazimuddin. To understand the latter course of events, some explanation is required.

There exists in Pakistan a sect variously called "Ahmediyas", "Qadianis", or "Mirzais". The sect itself is emphatic in describing its members as Muslims, and they distinguish themselves from other Muslims only by the allegiance they pay to the memory of their founder and those who have succeeded him in authority.

The founder was Mirza Ghulam Ahmed, grandson of a Muslim general who fought in the service of the Sikh Durbar. Mirza Ghulam Ahmed was born at Qadian, in the Punjab, in 1835, and after his father's death, he devoted himself wholly to religious study. In India, during the latter part of the last century, a good deal of religious controversy was raging; Mirza Ghulam Ahmed took part in it and drew around himself a group of followers. Later, he began to make mystical claims regarding himself and in 1901 he formed the Ahmediya Society which, at his request, was shown in the census records as a separate Muslim sect. In 1914, there was a difference of opinion among the members of the sect regarding the question of succession and a number of the members formed their own organisation in Lahore. The sect is, therefore, divided into two parties, those who remained at Qadian (and, since partition, have settled at Rabwah in West Punjab) and those gathered at Lahore. The total membership is in the order of 200,000 mainly concentrated in the Punjab, but there are Ahmediya groups to be found in many countries of the world.

The sect is distinguished, so far as worldly matters go, by discipline, sobriety, intelligence, and hard work. It is a closely-knit organisation in which every earning member contributes to the common fund, regularly and without fail, a fixed proportion of his earnings. The Ahmediyas do not drink or smoke. They actively help one another and scarcely bother to conceal the fact that they do so. They are unabashed in their proselytising activities and in this respect are apt to provoke irritation.

It is not now necessary to enter upon a discussion of the doctrinal differences that are said to exist between Ahmediyas and Muslims

as a whole; but it is true to say that on some points, the views suggested by Ahmediyas are forcibly disliked by other Muslims. On the question of *khatm-i-nabuwwat* (a phrase which refers to the cardinal point of Islamic faith that Mahomed was the last prophet to be sent by God and after him there shall be no other until the Last Day when the Messiah shall come in the bodily form of Jesus) the view held by the Ahmediyas is particularly disagreeable to other Muslims. The mere fact that the Ahmediyas have succeeded in arousing argument on this issue is a matter which Muslims intensely dislike. The then Chief Minister of the Punjab Provincial Government said in August, 1952: "I go further and say that to raise any argument on the doctrine of *khatm-i-nabuwwat* amounts to *kufr* (being an infidel) because an argument is only possible where the matter admits of some doubt. The belief in *khatm-i-nabuwwat* is a part of our faith and is above all argument and logic"[1]. In the same speech, the Chief Minister goes on to explain why this sect has drawn upon itself the dislike of other Muslims. "The Mirzais are themselves responsible for the hatred that has been created against them because of their separatist tendencies. They are separate from us in every department of life and have confined their personal, political and social activities to their own class".[2]

In brief, this sect, although claiming to be Muslim, and, let it be added, devoutly Muslim at that, was generally disliked on the alleged grounds that it was guilty of acts amounting to *kufr* and that it maintained itself separate and aloof from other Muslims in worldly matters as well as in prayer and religious exercise.

It happened that one of the ablest members of Khwaja Nazimuddin's Cabinet, Sir M. Zafrulla Khan, Minister of Foreign Affairs and Commonwealth Relations, was and is a member of this sect. Sir Zafrulla enjoyed, and continues to enjoy, an international reputation as a scholar and a jurist and he is today a judge of the International Court. Sir Zafrulla is sincerely wedded to his own community and there could have been no doubt in the mind of Khwaja Nazimuddin that Sir Zafrulla would have resigned from the Cabinet rather than witness action in any respect inimical to the welfare of his own community.[3]

In the days of British rule, the feelings of antipathy nourished by many Muslims towards the Ahmediyas were, to some extent, held in check, partly by the more important question of Hindu

[1]Punjab Inquiry Report op. cit. p. 97.
[2]*Ibid*.
[3]On this point see *Ibid*, p. 75.

rivalry, in particular the activities of the proselytising Hindu organisation, the Arya Samaj, and party by the dispassionate attitude of the British. It has been suggested, and sometime it is even now suggested, that the British helped and encouraged the Ahmediya movement in order to introduce disruptive elements into the Muslim ranks. Whether this is so or not, the suggestion lends support to the assertion that in pre-partition days the activities of those who opposed the Ahmediyas were, for better or for worse, restrained.

After the partition, this restraint was removed and, in 1948, the hostility of Muslims in general towards the Ahmediyas was demonstrated in the brutal murder of a Pakistani army officer, Major Mahmud who, by accident, found himself near a public meeting where speakers were addressing the crowd on the touchy question of *khatm-i-nabuwwat.* Major Mahmud was identified by his clipped beard, the distinguishing mark of an Ahmediya. He was dragged out of his car and done to death[1]. Thereafter, a succession of reports prepared by the Punjab Police showed that agitation against the Ahmediyas was steadily becoming more intense and that, as Government continued to ignore the activities of agitators, so those agitators were becoming more bold in their challenges to law and order. In due time, the challenge was presented in drastic fashion, but not before East Pakistan had become the scene of violence on no small scale.

Soon after assuming the Prime Ministership, Khwaja Nazimuddin paid a visit to East Bengal where, as we have already had occasion to notice, there were signs and portents of dissatisfaction as to the shape which the constitution might take. During that visit, the question of the national language arose and Khwaja Nazimuddin said that in accordance with what had been so explicitly stated and agreed to in the past, the national language of Pakistan would be Urdu, although Bengal would retain the inextinguishable right to its own provincial language.

On 31 January, 1952, an All-Party State Language Committee was convened by Mr. Ataur Rahman whose object was to carry on an agitation for the inclusion of Bengali as a state language of Pakistan.[2] The activities of this Committee led the District Magistrate in Dacca to apprehend a breach of the peace, and he therefore issued an order imposing Section 144 of the Pakistan Criminal Procedure Code whereby an assembly of more than five persons

[1] *Ibid.* p. 14.

[2] See Inquiry conducted by Mr. Justice Ellis of the Dacca High Court into the Police Firing at Dacca—reported in *Pakistan Times*, Lahore, 1 June, 1952.

in a public place becomes illegal. This order was made on 20 February, 1952 and on the next day, a crowd of students from Dacca University, and doubtless other sympathisers, gathered for the purpose of defying the magistrate's order. This demonstration of defiance took on the nature of civil commotion and the police were compelled to open fire. Several people, including students, lost their lives in these tragic happenings. Four members of the Provincial Legislature were arrested for their part in these demonstrations[1] and on 27 February, Dacca University was closed indefinitely. The Salimullah Hall, adjacent to the University, had evidently been used as the headquarters of the pro-Bengali language movement, and a large quantity of subversive literature was discovered there.

An Inquiry Commission, consisting of one High Court Judge,[2] was appointed to enquire into the police firing which was found to have been justified. Nevertheless, such was the obstinate sentiment of Bengalis on the subject that this Inquiry Commission was said by the Convenor of the All-Party State Language Committee, to have been "one-sided".[3]

The determination shown on this occasion was a shock to the Central Government which temporised by making ambiguous references to the use of Bengali. At the same time, an effort towards general exculpation was made by suggesting that the natural and pardonable sentiments of Bengalis for their own language had been exploited by those who wished ill to Pakistan. This view was echoed throughout the country and one of the Karachi newspapers, in a leading article, stated that Bengali had won equality with Urdu and that no one would begrudge it.[4]

By the end of the same year, Khwaja Nazimuddin was in a position to present the Report of the Basic Principles Committee to the Constituent Assembly, which he did on 22 December, 1952. The Report consist of a brief Preface indicating the plan and method of the work, followed by a series of recommendations set out in a form which almost amounts to a draft constitution. According to a later statement of Khwaja Nazimuddin, the Report was the result of long discussions held with the *ulema*, in the company of two or

[1] *Dawn*, Karachi, 26 February 1952.
[2] The Hon'ble Mr. Justice Ellis.
[3] *Ittefaq*, Dacca, 8 June, 1952.
[4] *Dawn*, Karachi, 23 February, 1952.

three other members of his Cabinet.[1] The Report was, in fact, born in an atmosphere of extreme religiosity.[2]

One or two unsatisfactory circumstances attended the final moment of its preparation. The Report was said to have been signed by one of the members of the Basic Principles Committee, Mian Iftikharuddin, subject to a note of dissent, but the Report itself states that the note referred to was found not to conform to the requirements of a minute of dissent and therefore could not be appended to the Report. Mian Mumtaz Daultana, another member of the Committee and at that time Chief Minister of the Provincial Government of the Punjab, is shown as having signed the Report without qualification, but he later stated that he, too, had signed the Report subject to a note of dissent and, in particular, that he did not agree with what was called "the parity proposal".[2(a)]

The recommendations make elaborate provision whereby no laws can be enacted which are repugnant to the Holy Quran and the *sunna.*[3] Boards of *ulema* were to be set up, consisting of persons learned in Islamic law to whom all proposed legislation could be referred in order to ensure that nothing repugnant to the Quran and the *sunna* should be enacted. In fact, as the Punjab Inquiry Report described it, this Report of the Basic Principles Committee made provision whereby the *ulema* would have a virtual veto on the workings of the Legislature.[4] No recommendation was made as to the national language, but it was provided that the head of the State should be a Muslim and that Pakistan should be organised as a Federation.

The Central Legislature was to consist of an Upper House (called "the House of Units") with 120 seats of which sixty would be filled by the Legislature of East Bengal according to the principle of proportional representation by means of the single, transferable vote. The remaining sixty were to be filled by the capital of the Federation and the Units of West Pakistan and, according to the division of seats among these, Punjab would get twenty-seven.

The Lower House, called "the House of the People", was to consist of four hundred seats, of which two hundred would be filled by East Bengal from single member constituencies, and the remain-

[1]Punjab Inquiry Report, op. cit. p. 295.

[2]*Ibid.*

[2(a)]*Ibid.* p. 285.

[3]Report of the Basic Principles Committee, November, 1952, p. 4, para. 3.

[4]Punjab Inquiry Report op. cit. p. 289.

ing two hundred seats were to be filled in like manner by the Central capital, and the units of West Pakistan. Out of the latter two hundred, ninety were to be filled by the Punjab. The seats in the House of the People were divided also with reference to community so that Hindus could be represented only by Hindus and then only to the extent of the number of seats allocated for their representation. The same provision existed for all other communities.[1]

In brief, East Bengal's situation in the Central Legislature was exactly equal, as regards number of seats, to the combined situation of all the units and areas comprising West Pakistan. This was called the "parity proposal", and it was to this that Mian Mumtaz Daultana, along with many other Punjabis, declined to agree. They did not accept the situation in which the Punjab held twenty-seven seats in the Upper and ninety seats in the Lower Houses of the Central Legislature. On the other side, the Bengalis professed themselves aggrieved because they did not command that number of seats to which their Province was entitled by reason of its substantially greater population.

In his speech presenting the Report, Khwaja Nazimuddin described the document as "the first golden ray of the sun which illumines the sky", and in his opinion, the recommendations corresponded not only to the aspirations of Pakistan but also to its needs and genius. In Khwaja Nazimuddin's view, the recommendations implemented the terms of the Objectives Resolution by interpreting the principles of Islam in the light of twentieth century democratic constitutional practice. The provision that the head of the State must be a Muslim was justified by reference to the fact that the monarch of the United Kingdom is also the head of the Church of England as by law established. It was further said that provision had been made for full respect for provincial autonomy without weakening the Federation. Parity of representation was justified by asserting that it would bring about a happy inter-dependence between the two wings and would foster the growth of feelings of unity. It was admitted that the representation of various Provinces at the Centre had been arranged so as to give weightage to the smaller Provinces in order to create confidence and trust.[2] It may be added that this provision as to weightage, along with the parity proposal, was interpreted by the Punjab as an arrangement made solely at the expense of that Province.

[1]Report of the Basic Principles Committee, November, 1952, para. 46 and Schedule II.

[2]See speech made by Khwaja Nazimuddin in the Pakistan Constituent Assembly, 22 December, 1952.

These were the first constitutional recommendations to be laid before the Assembly, more than five years after the creation of Pakistan and they were received with mixed feelings, especially in what has been described, no doubt with a distinct tactlessness, as "the backbone of Pakistan".[1] Nevertheless, Khwaja Nazimuddin was undismayed. Evidently, he was fully confident that his proposals would go forward rapidly to the intended conclusion since, hardly a fortnight later, it was reported that at the next meeting of the Constituent Assembly, Khwaja Nazimuddin would move that Pakistan should become a sovereign republic.[2]

Before, however, any of these matters had time to develop themselves, a new crisis thrust itself upon the nation.

[1]See, *e.g. National Language of Pakistan*, op. cit. p. 327.
[2]*Dawn*, Karachi, 7 January, 1953.

CHAPTER V.

THE FALL OF KHWAJA NAZIMUDDIN.

In Lahore, during the days immediately preceding 28 February, 1953, as well as in other cities of the Punjab, leaders, who were engaged in conducting a movement against the Ahmediya Society, who had been preaching violence and who had offered challenges to the Government were arrested. When this was known, small parties of demonstrators and sympathisers, paraded the streets, forcing small shopkeepers to close their shops and intimidating others. In the space of a few hours, the movement had become hostile and violent. Widespread disturbances broke out in the Province, and in some places rioting continued until the middle of April. In certain instances, the situation became so alarming and the inability of the police to control the situation so apparent, that the Army was called upon to render aid to the civil power and in Lahore martial law was proclaimed and kept in force until May, 1953. It was later stated that in Lahore alone, the military authorities admitted to casualties amounting to eleven killed and fortynine wounded, inflicted in the course of quelling the disturbances.[1] These figures take no account of casualties inflicted by and among the rioters in other incidents.

Courts martial were set up and a number of ringleaders were arrested and sentenced to death or to long terms of imprisonment. As it turned out, these sentences were, in many cases, either not inflicted or were greatly mitigated for the reason that some of the men sentenced (for example, Maulana Maudoodi to whom reference will again be made) were and are held in high respect even by people who have no sympathy with mob violence. It is not now proposed to repeat the tragic detail of the Punjab disturbances, but it is necessary, in order to understand the immense difficulties which have beset the people of Pakistan at various times, to know some thing of the course of these events.

The agitation against the Ahmediya community which, as has been observed, is concentrated in the Punjab, was by the departure of the British, enabled to take a more positive and active form. From 1948 onwards, the records of the Punjab Police, the Criminal Investigation Department and the Intelligence Bureau, show a continuous

[1] Punjab Inquiry Report, op. cit. passim.

stream of reports indicating that agitation against the Ahmediyas was growing in intensity, in determination and, for the matter of that, in obscenity. For reasons which will become clear as they arise, it will be seen that the tendency of Government, both Provincial and at the Centre, was to take no action on these reports despite the warnings of top-ranking officers that procrastination could only lead to greater trouble in the end[1].

An appreciation of the situation, prepared by the Deputy Inspector-General of the Punjab Police, Criminal Investigation Department, dated October, 1952, bears a note by the Inspector-General which reads: "These tendencies will spread and bring disaster in their wake. The whole of our machinery will go to pieces".[2] Knowledge of the ever-increasing gravity of the situation was not confined to the police. The British Deputy High Commissioner, in Lahore, informed the Deputy Inspector-General of Police, C.I.D., that according to reports received by him, the situation in the country was very threatening and that a general flare-up was imminent[3].

At the highest level, the method of dealing with the problem was either to ignore it or to issue orders, indicating the action to be taken against the agitators and the agitation, which orders were not, however, intended to be obeyed. In July, 1952, a police officer attached to the police station at Kup, in Multan, decided to resolve the contradiction by actually obeying the orders and he used force to disperse an unlawful assembly. The next day, an indignant crowd of about five thousand persons assembled outside the police station demanding his transfer. Efforts at pacification failed and eventually the police were compelled to open fire as a result of which six people lost their lives. An inquiry, presided over by a Judge of the Punjab High Court, found that the firing was justified. Nevertheless, those who died were held to be martyrs to religion, and a meeting was advertised at which their obsequies were to be publicly observed. A proposal from the police that this meeting be banned was not supported by the Chief Minister who also ordered that no general warning to any agitating group need yet be given.[4]

The agitation assumed several forms before it burst finally in to its full fury. Among the most insistent of the demands was that which called for the dismissal of Sir Zafrulla Khan, at that time

[1] *Ibid.*
[2] *Ibid.* p. 143.
[3] *Ibid.* p. 144.
[4] *Ibid.* p. 92.

Minister of Foreign Affairs, on the ground that he was a member of the Ahmediya community. This, by itself alone, was a disgraceful as well as an embarrassing suggestion. Sir Zafrulla Khan is a man of exceptional talent who had served his country well and if he had been dismissed from office purely on grounds of religious intolerance, the name of Pakistan in international circles would scarcely have gained any advantage thereby.

The leaders themselves were numerous and together they made up an incongruous collection. There were editors of established and respected newspapers, *ulema* of a considerable order of ability, some prominent public men, penniless adventurers seeking to make their way in politics and professional rabble rousers. A further word about these people helps to clarify the difficulties of the situation then prevailing.

It can be said of most of them that if consistency is an index of sincerity, then they had never failed, for many years, to announce and publicise their dislike of the Ahmediya community which they attacked in print or at public meetings on several grounds. They regarded the religious views of the Ahmediyas as damnable; they considered the Ahmediyas were a disruptive influence among the Muslims and they disliked their separatist attitude. They also cherished the notion that Ahmediya leaders were guilty of scandalous conduct, an idea which afforded themes for obscene oratory. A specimen is mentioned in the Punjab Inquiry Report which quotes an anti-Ahmediya leader as saying: "We don't blame Mirza Ghulam Ahmed, (founder of the Ahmediya Society) false as he was, because he committed fornication only occasionally. Our objection is to the present *khalifa* (leader) who commits fornication every day."[1]

The Ahmediyas consider themselves to be devout and complete Muslims[2]; but in spite of this, it is probably true to say that the opposition to them derives mainly from doctrinal differences on points of religious belief, tempered by an element of jealousy which arises from the general well-being and prosperity which the Ahmediya community as a whole enjoys. Like other small communities, held together by some powerful cementing force, as religious belief certainly is, the Ahmediyas are in a sense strong because they stand together, they are disciplined and they help one another.

[1] *Ibid.* p. 15.

[2] See, *e.g.* the speech of Sir Zafrulla Khan on the Objectives Resolution. Pakistan Constituent Assembly Debates, Vol. 5, No. 5, p. 65 *et seq.*

Men like Maulana Akhtar Ali Khan, editor of the well-known Punjab newspaper, *Zamindar*, has conducted opposition to the Ahmediyas for many years and has promoted many activities in furtherance of his views on this subject. Similar in status, but representing the *ulema* is Maulana Abul Ala Maudoodi, founder of the Jama'at-i-Islami, an organisation which aims at the sovereignty of Allah throughout the world, based on a kind of religio-political system which this organisation believes to be of the very nature of Islam[1]. This Jama'at is not large in membership, but it is active and its leader, Maulana Maudoodi, is a man of ability who writes well and effectively on political and economic questions, in terms of the ideology he holds. Unfortunately, his works are inaccessible to most people outside Pakistan, because they are written in Urdu, but there can be no doubt about his capacity and about the respect with which he is regarded. At the time of the disturbances in Lahore, he was sentenced to death by court martial, but the sentence was remitted and later he was released from prison. It cannot be doubted that if the death sentence had been executed, public indignation would have been widespread and intense.

On the subject of the *ulema* in general, it must be remembered that those who took part in the Punjab riots and in the events preceding them, cannot all be dismissed as illiterate and ignorant fanatics because they are not. It is probable that they are all chauvinistic, narrow-minded, and subject to the intellectual paralysis to which the Punjab Inquiry Commission referred in its report[2], but this should not be allowed to disguise the fact that many of them are learned in theology and law, subjects upon which there exists, in Islam, a voluminous and profound literature. The advantage which these men enjoy in their political activities is that they live close to the ordinary people and are rarely seen in an expensive *milieu* copying the manners and modes of the west. Indeed, it is always possible that any humble-looking, ill-clad bearded pedestrian, with whom some foreign visitor may by chance rub shoulders when exploring the bazaar, is, in fact, a learned Muslim divine on his way to read the *khutba* at the mosque.

At the other end of the scale are demagogues like Syed Ata Ullah Shah Bokhari, a leader of the Ahrar party and a man notorious for his command of all the tricks of street-corner oratory and his ability to hold an audience spellbound by his skill in the use of invective, controversial rhetoric, and abuse.

[1]Punjab Inquiry Report op. cit. p. 243.
[2]*Ibid*. p. 220.

The Ahrar party was formed when a group of Muslims, who were members of the Indian National Congress, seceded from it in 1931. Despite this secession, the Ahrar party was never entirely disassociated from the Congress and for some time after the "Pakistan" resolution was adopted in Lahore in 1940, the Ahrar continued to oppose the partition of the sub-continent. This opposition seems to have been based partly on the allegation that Mr. Jinnah was, according to the Ahrar at all events, irreligious. It seems that this party is led by several turbulent men who aim at achieving prominence by promoting or fomenting trouble. Maulana Mazhar Ali Azhar has, at various times, distinguished himself as a creator of trouble between Shias and Sunnis[1]. The Ahrar tend to utilise political controversy or religious controversy as and when it suits them and they exploit political and religious situations as convenience may demand.

The Ahrar party is well known for its utter hostility to the Ahmediya community and, according to the authors of the Punjab Inquiry Report, it was that hatred which provided the main incentive for the creation of the party which now claims to be, in Pakistan, the monopolist of the true knowledge of the significance of Islam and of the ability to introduce into the country the Islamic way of life.

With some people, opposition to the Ahmediyas has developed into an obsession for which there seems to be no cure. Men like Qazi Ehsan Ahmad Shujabadi devote their entire intellectual energies to proving that such disasters or reverses as overtake Pakistan, are directly traceable to the work of the Ahmediya community[2]. Wherever he goes, the Qazi takes with him a box full of Ahmediya and anti-Ahmediya literature. As far back as 1950, when Khwaja Nazimuddin was Governor-General, Qazi Shujabadi called on him and produced part of his collection of Ahmediya pamphlets, the contents of which are said to have horrified the pious and orthodox Khwaja Nazimuddin[3].

These are the kinds of people who, along with political upstarts, religious mountebanks and others imbued with wrong notions, pursued their efforts against the Ahmediya Society in such a manner as to lead to a grave conflict with established authority.

[1]The two great divisions of Islam. The difference might be compared with the distinction between Roman Catholics and Protestants although there is, in fact, no historical or doctrinal basis for such a comparison which is mentioned merely to indicate the significance of the position.

[2]Punjab Inquiry Report, op. cit. p. 125.

[3]*Ibid.*

In May, 1952, a meeting of the Ahmediya Society was held in Karachi at which Sir Zafrulla Khan gave a characteristically eloquent and learned discourse on Islam as a living religion. A few days beforehand, the Prime Minister (Khwaja Nazimuddin) informed Sir Zafrulla that he disapproved of his (Sir Zafrulla's) intention to give this address to which Sir Zafrulla replied that had he known this earlier he would not have engaged himself to speak at the meeting, but, having done so, he would not break his engagement. In the alternative, the Prime Minister could have his resignation.[1]

This meeting provided the occasion for some brief civil commotion in Karachi during which damage was done to commercial establishments owned by members of the Ahmediya community. Further, it strengthened the determination of the opponents of this community and accelerated the pace of their activities. In the July which followed, a Committee formed in Lahore, consisting mostly of members of the Ahrar party, decided to issue invitations to a number of people to attend a convention whose purpose would be to determine the programme of action for the protection of the *khatm-i-nabuwwat* doctrine. At this convention, three demands were adopted for presentation to and compliance by the Government. They comprised (*a*) the Ahmediyas to be declared a separate minority (*b*) Sir Zafrulla Khan to be removed from the post of Foreign Minister and (*c*) Ahmediyas to be removed from key-posts in the State. A Council of Action (Majlis-i-Amal) was formed, charged with the duty of settling the future programme of activity to achieve these demands.

In the ensuing month of August, a group of anti-Ahmediya leaders called on Khwaja Nazimuddin and presented these demands to him. The Prime Minister professed himself unable to discuss the matter there and then and he suggested that the subject should be discussed after Independence Day which falls on 14 August. Khwaja Nazimuddin indicated that he proposed to touch upon the matter in his Independence Day broadcast, but, in fact, he did not do so. Thereafter, there were several meetings with the Prime Minister, but on the whole the leaders of the movement got little satisfaction and in January, 1953, it was decided, in view of the unsatisfactory response of the Prime Minister, that direct action should be resorted to.

By this time, Khwaja Nazimuddin had become the object of contemptuous reference by those who were engaged in working

[1] *Ibid*. p. 75.

up the agitation,[1] for it must be remembered that apart from the Ahmediya question, the position of the country with respect to food, unemployment, and general economic conditions, was far from satisfactory and there were no real signs that Khwaja Nazimuddin possessed the strength of purpose or the ability to introduce measures necessary to rescue a fast deteriorating situation.

News of the decision to resort to direct action and of the measures to be taken to implement it, was soon received by the police authorities and information was exchanged between the authorities concerned in Karachi and Lahore relating to these developments. In Karachi, the attempt made at the end of February to offer violence was immediately and effectively stifled by swift action by the authorities who rounded up all leaders and their followers and put them speedily into jail. In the Punjab, as we know, there were disturbances of a widespread and serious nature.

On 6 March the Chief Minister of the Punjab Provincial Government, Mian Mumtaz Daultana, issued a statement appealing for law and order and giving an assurance to the people that he and his (Provincial) Government were prepared to open negotiations with the leaders of the anti-Ahmediya movement, at that time engaged in leading the attacks against established authority and on defenceless members of the Ahmediya community.[2] The basis for these negotiations was to be that the three demands would be forwarded to the Central Government for acceptance. It is not surprising to learn that this remarkable proposal was followed by an assortment of resolutions passed by a number of minor political organisations calling for acceptance of the demands and proposing measures to be taken to enforce this acceptance. These proposals varied from the creation of new criminal offences aimed at the Ahmediya teachings to appeals to members of the Muslim League to become martyrs in the sacred cause.[3]

This wholly unsatisfactory and, in a sense, dishonest[4] statement of Mr. Daultana and the consequences flowing from it had the further consequence of steeling most people against the disgraceful efforts of the *ulema* and others, who had led the anti-Ahmediya agitators into these murderous and destructive activities.

[1] *Ibid.* p. 143.

[2] The movement was not thus described by its own members. They called it *Tahafuz-i-khatm-i-nabuwwat* meaning that it was for the protection of the doctrine of *khatm-i-nabuwwat*.

[3] Punjab Inquiry Report op. cit. p. 165 *et seq.*

[4] *Ibid.* p. 279.

It must be remembered that among the many Muslims who heartily disapproved of the Ahmediya community, there are many who equally disapprove of the narrow and arid mentality of those who profess to be teachers of true Islam and who, by means of their anti-Ahmediya activities, had tried to hold the nation up to blackmail. In the preceding February, the Governor-General in a speech made in Dacca to the Asiatic Society of Pakistan, emphasised that in Pakistan there was no room for theocracy and in Islam no room for priestcraft.[1]

It is for this reason that after Mr. Daultana's statement of 6 March, public sentiment underwent a distinct change and four days later, Mr. Daultana was obliged to make a further statement withdrawing his earlier observations. Not long after this, Mr. Daultana resigned from the office of Chief Minister of the Provincial Government.

Enough has perhaps been said of this affair to show its seriousness and to make it possible to explain clearly the place it occupies in the history of Pakistan's constitutional problems. It is also to be borne in mind that although the anti-Ahmediya agitation was successfully defeated, the controversy is not dead. It must be regarded as a continuing factor in the course of internal political affairs in West Pakistan.

As we have seen, the agitation against the Ahmediya community was, in itself, nothing new, but, since 1948, it had been gathering force and potentiality. By it, Khwaja Nazimuddin was put into a position of great difficulty because he was, on religious grounds, personally sympathetic to the three demands and, on religious grounds also, he held the *ulema* in considerable respect. He had, for these reasons, no inclination to dismiss the demands by a summary rejection. Indeed, he could not consistently do so since the recommendations of the Basic Principles Committee which he had, in December 1952, presented to the Constituent Assembly, made specific provision for the *ulema* to be closely associated with the work of the proposed legislature and to exercise some control, of a doctrinal nature, on the laws it was proposed to enact. It is doubtless true and, in justice to Khwaja Nazimuddin, it deserves to be added, that many people in Pakistan, including some members of his own Cabinet, entertained sentiments similar to his own.

Nevertheless, whatever may have been those sentiments, there were cogent reasons for hesitation in accepting the three demands,

[1]*Dawn* Karachi, 13 February, 1953. See also speech by H. E. Mr. Ghulam Mohamed to the same effect at Abbottabad on 12 May, 1953.

In the first place, there was a strong of body Muslim opposition to the efforts of the *ulema* to secure a monopoly of the right to interpret the Quran and exercise political control. It cannot be disputed that there was ground for apprehending such efforts for it must not be assumed that Khwaja Nazimuddin's proposal to set up Boards of *Ulema* satisfied their aspirations. No sooner had this proposal appeared in the Report of the Basic Principles Committee than thirtythree of the *ulema* published a statement disapproving of the proposal and instead they desired that from them should be selected persons who would form a kind of Supreme Court which, in consultation with one judge from the existing Supreme Court, qualified for the purpose by his knowledge of Islamic law, would decide whether laws enacted by the legislature were repugnant to the Quran or *sunna* or not. This suggestion was described, in a leading article published in a Karachi newspaper, as "Ulemacracy".[1] In his speech at Abbottabad, made some weeks after the events with which we now deal, the Governor-General, Mr. Ghulam Mohamed, said that some of the *ulema* were trying to dictate how Pakistan should be governed and that there is no authority in the Quran for the proposition that only certain people have the right to interpret and represent Islam. He added that ignorance and intolerance were disrupting Pakistan's unity.[2] This speech was certainly representative of the views of an influential body of opinion in Pakistan which Khwaja Nazimuddin could not afford to ignore.

Secondly, Khwaja Nazimuddin had to consider the reaction upon international sentiment and the conclusions that might be drawn in other countries concerning the path which Pakistan was proposing to tread. As we have noted, the stewardship of Khwaja Nazimuddin was a period of economic reverse and threat of famine. In these circumstances, any thoughtful man might well decide that it would be unseasonable to create misgivings in the minds of those nations which had shown some disposition to give help.

For Khwaja Nazimuddin, the problem was composed of utterly incompatible and unyielding elements, especially when it is remembered, to quote yet again the Punjab Inquiry Report, that: "among the *ulema* too, there are men of honour who have the strength and courage of their convictions and cannot be lured by any wordly attractions".[3] In the result, Khwaja Nazimuddin allowed events to take their course and the problem was finally solved for him when the *ulema* decided to throw down a challenge

[1] *Dawn*, Karachi, 24 February, 1953.
[2] Governor-General's speech at Abbottabad on 12 May, 1953.
[3] Punjab Inquiry Report op. cit. p. 282.

to the Government by a programme of direct action, a gage that Khwaja Nazimuddin had either to pick up or ignominously betray his trust as guardian of law and order. He was man enough for the former. Nevertheless, he cannot be acquitted of having contributed much, by vacillation and indecision, to the fury of the disturbances.[1]

Mian Mumtaz Daultana, Chief Minister of the Province where the seat of the trouble lay, was a good deal clearer and cooler-headed. He had long realised that the anti-Ahmediya agitation promised to develop into an affair of magnitude which he could not be sure of controlling, much less preventing. It appears that upon reflection, he had decided that in these circumstances, the wisest course to follow was to divert its fury, as well as the blame which must afterwards follow, from his own Government into another direction and for this purpose, he chose the Central Government which, through the weak attitude of Khwaja Nazimuddin, offered to Mr. Daultana a promising medium for the execution of this plan. These conclusions are supported by the conduct of Mr. Daultana, prior to the disturbances and even during them, which was unsatisfactory. His speeches and actions were ambiguous in tone and implication and some evidence was offered to the Punjab Inquiry Commission purporting to show that Mr. Daultana had surreptitiously indicated his support for the anti-Ahmediya movement. However, the Commission did not accept this suggesgestion.

We are now in a position to comprehend the constitutional importance of the whole tragic episode. Mr. Daultana did not in any respect agree with the parity proposal which had been recommended in the Report of the Basic Principles Committee. In this matter, it is certain that he had the support if not all, then of many of the people of the Punjab. The issue developed almost into a personal controversy between Mr. Daultana and Khwaja Nazimuddin[2], and the entire press of Pakistan, published during the period which followed immediately after presentation of the Basic Principles Committee Report bears witness to Mr. Daultana's attitude to the parity question as there represented.

It is, of course, correct that the anti-Ahmediya problem had began long before the question of parity between East and West Pakistan engaged public attention, but circumstances conspired to create a situation in which the agitation in the Punjab and

[1] *Ibid.* p. 283.
[2] *Ibid.* p. 285.

elsewhere, together with Khwaja Nazimuddin's incompetent method of handling it, offered to Mr. Daultana a most convenient means of embarrassing the Central Government and the Prime Minister. If the result of the Punjab trouble was to cause Mr. Daultana to lose his Chief Ministership by resignation, it was also, no less, to remove the principal author of the Basic Principles Committee's proposals; for, on 16 April, 1953, the Governor-General, exercising powers under Section 10 of the Government of India Act, 1935, dismissed Khwaja Nazimuddin and invited Mr. Mahomed Ali to form a new Government.

Chapter VI.

CONSIDERATION OF THE BASIC PRINCIPLES COMMITTEE'S REPORT.

The public was informed of the fall of Khwaja Nazimuddin in a statement of some two hundred words issued by the Governor-General on the day following. In this statement, he referred to the grave food situation; the necessity for vigorous measures to deal with economic problems; and the urgency of the situation as regards law and order. The Governor-General added that he had concluded that Khwaja Nazimuddin's Cabinet had proved inadequate to grapple with the difficulties facing the country and he had therefore asked Khwaja Nazimuddin and his Cabinet to relinquish office to make way for a Cabinet better fitted to discharge its obligations towards Pakistan[1].

The choice of Mr. Mahomed Ali as Prime Minister was undoubtedly a surprise, and it seems to have been made on the basis of two considerations. The first was that a convention has grown up in Pakistan (which may well be perpetuated in the constitution) that if the Governor-General (or head of the State) is from West Pakistan, the Prime Minister should be from East Pakistan and *vice versa.* Since Mr. Ghulam Mohamed was a Punjabi, the choice of a Prime Minister was limited to likely candidates from the east wing. The second consideration seems to have been that the Governor-General was well aware that nearly six years had passed since the creation of Pakistan, that no constitution had been written and that no elections to the Central Government had been held. In these circumstances, the same seventy men, sitting in the Constituent Assembly, exchanging ministerships for governorships and governorships for ambassadorships[1(a)] were, in all probability, becoming exhausted of energy and ideas. It is not for nothing that in most countries of the world, the administration is compelled to appeal to the electorate after four or five years in office. Not only do ministers and legislators become tired and mentally barren, but frequently, the public simply gets bored with the same faces.

It was, therefore, a good stroke of psychology to bring in

[1]See Press Communique issued from the Governor-General's House, dated 17 April, 1953.

[1(a)]See Editorial, *The Times of Karachi,* Karachi, 25 June, 1955 on *Political Pensioners.*

someone comparatively new, although, as it turned out, the choice did not prove outstandingly successful. At the time, however, the possibilities seemed good. Mr. Mahomed Ali was a younger man; he seemed to be brisk and businesslike, and he introduced some unconventional breeziness which he had acquired from contact with Canadians (in whose country he had, prior to the ambassadorship at Washington, been High Commissioner) and with Americans. The nation, as a whole, in no wise regretted the departure of Khwaja Nazimuddin and it gave to Mr. Mahomed Ali and his new ministers a welcome and as good a start as a politician is at any time entitled to expect.

A good start was certainly what was needed. The virtual abandonment of the more important of Khwaja Nazimuddin's constitutional proposals had led to a deadlock on certain fundamental issues as between the two wings. In addition, there was a grave prospect of famine in West Pakistan—a prospect averted only by a generous gift of wheat from the United States of America. Foreign earnings from trade were continuing to decline and the cost of living was rising. These were some of the problems that Mr. Mahomed Ali was expected to deal with, along with that of the constitution.

On 7 October, a little less than six months after he had accepted office, Mr. Mahomed Ali moved in the House that the Report of the Basic Principles Committee be considered. He announced that the deadlock between the respective representatives of the east and west wings of the country had been overcome and that a formula, acceptable to both, had at long last been evolved. The proposals were that the Federal Legislature should consist of two Houses, and in the Upper House the membership should be fifty, divided equally among the five units of which East Bengal was one, the Punjab another and the remaining components of West Pakistan were grouped together into three units, each with the same representation, namely, ten seats in the Upper House.

The Lower House comprised three hundred seats which were likewise divided among the same five units, on the basis of population. According to this proposal, East Bengal held one hundred and sixty-five seats, the Punjab seventyfive, the North West Frontier Province group, twentyfour seats, the Sind and Khairpur group, nineteen seats and the Baluchistan, Bahawalpur, and Karachi group, seventeen seats. The further division by religious communities was retained, but no attempt was made to settle the number of seats to be reserved for each of them.

It will at once be seen that, in a sense, the principle of parity had been sustained since the total representation of East Bengal in the two Houses amounts to one hundred and seventyfive seats and the total representation of the four units comprising West Pakistan in both Houses, also comprises one hundred and seventy-five seats. The Prime Minister then explained how it was intended that the new system should work.

The powers of both Houses were to be equal and for the purpose of electing the head of the State and for motions of confidence and no-confidence, the two Houses were to sit jointly and the measure would be passed by a simple majority, provided that the majority included at least thirty per cent of the members of each zone. For this purpose, Pakistan was to be divided into two zones, east and west; the former consisting of East Bengal only and the latter comprising the four units of West Pakistan.

In the event of difference between the two Houses of the Legislature on other matters, a joint session was to be called and the measure would be passed in the event of a favourable majority provided, however, that the majority included thirty per cent of the members present and voting from each zone. If the measure was not passed with such a majority, then it failed, but if the measure were of such a nature that the administration could not be carried on without it, or the security or financial stability or credit of the country were likely to be gravely imperilled, the Head of the State would have power to dissolve both Houses and order fresh elections. For this purpose, the Head of the State would act on and be bound by the advice of his Ministers.

The system therefore was that in the Lower House, the east wing had a majority whereas in the Upper House, the west wing held the larger number of seats so that in the event of controversial issues touching matters of difference between the two wings, joint sessions of the Legislature were inevitable and, in view of the provision as to voting, it was not at all clear why two Houses in the Legislature were necessary.

The Prime Minister explained that the intention of the proposals was to give to each part of the country a fair share in its governance and to introduce an element of inter-dependence between all of the units of which Pakistan is composed. It was also hoped to eliminate the evil consequences of a pernicious form of local patriotism expressed in the word "provincialism" connoting an enthusiasm for one's own part of the country and the people hailing from it, to the detriment of the nation as a whole. It was

believed that the new arrangements would have the effect of sustaining the principle of parity in the Legislature (the very least that East Bengal was likely to accept) without, at the same time, exposing the western wing to the risk of that permanent domination by the eastern as had earlier been feared. All this was, in substance, what the Prime Minister had to tell the House, along with an expression of the hope that the entire Report of the Basic Principles Committee would be considered during that very session of the Constituent Assembly and the constitution finally drafted without further loss of time.[1]

The Prime Minister also touched upon the question of making provision in the constitution to ensure that no law would be enacted which was repugnant to the Quran or the *sunna*. In this respect, the changes were drastic and the aspirations of the *ulema* dashed. The Prime Minister significantly said "there could be no question of imposing the views of one school upon another". Now, it had been clear at the very moment when Khwaja Nazimuddin introduced his constitutional proposals to the Constituent Assembly that these might open the door to differences such as exist between the Sunnis and the Shias on certain matters of religion, As we have already seen, there exist in Pakistan people only too ready to fish in that water, at times particularly troublesome. Secondly, the Muslims of Pakistan, in their personal law, are variously governed by at least four main schools and at least two major sub-schools of Islamic law. Among Sunnis, the school of Abu Hanifa and the sub-schools of his two celebrated disciples, Abu Yusuf and Imam Mahomed, along with the school of Shafi'i, govern the majority. Among Shias, the Shia Ithna Ashari and the Shia Ismaili schools prevail[2]. While these circumstances do not offer insuperable obstacles, they do present a situation which might be fruitful of endless and, perhaps, bitter disputation, hence the new proposals placed upon the Supreme Court of Judicature, the duty of deciding whether or not enactments were repugnant to the Quran or the *sunna*, without the assistance of the *ulema*.

The Report was considered by the Constituent Assembly during thirteen days in the month of October and on 14 November, 1953, it was resolved that a drafting committee, consisting of eight persons whose names were stated in the motion, be appointed to draft the new constitution Pakistan on the basis of the decisions taken

[1]Prime Minister's speech to the Constituent Assembly, 7 October, 1953.

[2]Faiz B. Tyabji, M.A., Barrister-at-Law, *Muhammedan Law* N. M. Tripathi, Bombay, 3rd Edition, 1940, p. 24 *et seq.*

in the Assembly with respect to the Basic Principles Committee's Report, and to submit the draft to the Assembly.

Despite assurances given by the Prime Minister that nothing would be allowed to impede the preparation of the constitution and that the Constituent Assembly would continue to sit until the draft was finished, progress could not be maintained. Four months after the appointment of the Drafting Committee, attention was diverted to the question of elections in East Bengal, the term of whose Provincial Legislature was due to end in March, 1954. The life of the Legislature had already been extended by one year[1] and in the prevailing temper of the country, which was becomingly increasingly alive to the fact that despite the years which had passed, a constitution was as distant as ever, any attempt at a further arbitrary extension would have aroused considerable dissatisfaction and hostility towards the Government.

The outgoing Provincial Government, represented by an enormous Muslim League majority, found itself opposed at the polls by the United Front of which the principal components at that time were Mr. A. K. Fazlul Huq's Krishak Sramik Party and Mr. H. S. Suhrawardy's Jinnah Awami League, together with the Gananantri Dal (said to be Communist), the Nizam-i-Islami Party, the Khilafat Rabbani, and some Communist candidates pure and simple.

The result of this provincial election was that the Muslim League in the East Bengal Legislative Assembly was swept from power, from office and almost out of sight for it retained only nine seats in the Assembly. It was a devastating defeat of which one advantage was that it proved the election to have been clean without any attempt at rigging by the Government. The great disadvantage was that just as the previous Muslim League Government had enjoyed power unrestricted by any effective opposition, so the new Government would be in the same position and there was not the least reason to suppose that the new parties would be capable of any greater resistance to the corrupting influence of absolute power than are political parties of any other description.

These election results were not the only evidence of deep revulsions of feeling in East Bengal. At the very time the results were being recorded, news broke of serious outrages by workers employed at the Karnaphulli Paper Mills, near Chittagong. Among thirteen dead were the Operative Manager, Mr. Khurshid,

[1] East Bengal Legislative Assembly (Continuance) Act 1953.

and the Labour Officer, Mr. Shirazi. These shocking happenings occurred on 22 March, 1953 and the public throughout Pakistan was horrified, not only by reason of the loss of life and the brutal manner in which it had been inflicted, but also because the Karnaphulli Paper Mills, an enterprise of considerable magnitude, was one of the great landmarks in Pakistan's industrial development. These Mills were planned to produce the entire needs of Pakistan in the matter of writing and wrapping paper with a margin for possible export. A few months prior to these outrages, the shares had been offered to the public at a premium of twenty-five per cent and had been heavily oversubscribed. By the death of Mr. Khurshid, the Mills not only lost a man of considerable ability, but foreign technicians employed there, alarmed for their own safety, fled from the Mills and with difficulty were induced to return. Foreigners, contemplating acceptance of employment in Pakistan were correspondingly discouraged as also were foreign investors. The Mill was obliged to close down and some weeks were to elapse before its operation could be resumed. It was evident that subversive influences, of one sort or another, were at work and that national enterprises such as the Paper Mill, had been selected as suitable targets for these operations.

Not long after this, an attack was made on Dacca Jail by a riotous mob, led by a man who was later accepted as a Minister in the new and expanded East Bengal Cabinet. This man was arrested at the time of the attack on the jail, but the Inspector-General of Police was compelled to release him.

The subsequent history of events in East Bengal must be reserved for a later chapter. Meanwhile, in the Constituent Assembly, the signals had been read aright and on 20 April, 1954, the Muslim League Parliamentary Party agreed, in terms of a "language formula" that both Urdu and Bengali should be official languages of Pakistan.

The language formula, which was accepted by the Constituent Assembly on 7 May, 1954, and is to be found in the Report of the Basic Principles Committee as adopted by the Constituent Assembly on 21 September, 1954,[1] provided that in the new constitution, Urdu and Bengali would be the official languages with such other provincial languages as may be so declared by the Head of the State. For a period of twenty years from the coming into force of Pakistan's constitution, English would continue to be used for all official purposes for which it had hitherto been employed. There

[1] Part XVII, para. 276.

were subsidiary provisions for the development and growth of a common language, for the use of Urdu and Bengali in Parliament and for the use of all languages, including other provincial languages, as regards qualifying examinations for the Central Government services. A provision was also included whereby the use of English might be continued even after the twenty year period specified in the formula.

The adoption of the language formula was moved in the House by the Prime Minister, Mr. Mohamed Ali, in a speech which was a strange mixture of good sense and false sentiment.[1] The speech also contains interesting observations with reference to the use of Arabic which seemed to connect with that provision in the motion which relates to the development of a common national language.[2]

It must not be thought that this decision of the Constituent Assembly was made without opposition. As soon as it became known that the Muslim League Parliamentary Party had agreed to the adoption of Bengali, along with Urdu, as an official language, Karachi became the scene of emphatic protest. On 22 and 23 April, 1954, there were demonstrations against the proposal. Shopkeepers closed their shops and some Urdu newspapers appeared with black borders. Slogans criticising the decision and expressed in anti-Bengali terms, appeared on walls and pavements. A procession through the city, led by Baba-i-Urdu[3] Dr. Maulvi Huq, marched to the Constituent Assembly building, where the Prime Minister met the leaders of the procession. This particular demonstration was reported as consisting of five thousand persons, but later, Dr. Huq expressed indignation over this injustice and asserted that no less than twentyfive thousand persons marched with him. Whether this was so or not, the resolution was, despite the procession, adopted a fortnight later and Bengali seemed to have attained full stature in the State. But while these things were happening in Karachi, the situation in East Bengal was manifestly developing in an unsatisfactory manner and in order to recount what was going on there, a new chapter must be started.

[1]Constituent Assembly Debates, Vol. XVI, No. 9, p. 85 *et seq.*
[2]*Ibid.* p. 87.
[3]Father of Urdu.

CHAPTER VII.

TROUBLE IN EAST BENGAL.

No sooner had the provincial election results in East Bengal been declared than it became apparent that the United Front was less united than it had so been credited. Of the two main components, Mr. Fazlul Huq's supporters could claim the larger representation in the Legislature, but Mr. Huq's group comprised parties other than his own Krishak Sramik Party, and when the question of alloting ministerial portfolios arose, it was found that the claims of personalities, as well as of party policies, were many and apparently pressing. At one time, Mr. Fazlul Huq proposed to have as many as twenty ministers in the Government, a Gilbertian situation that was averted by later happenings.

Mr. A. K. Fazlul Huq was more than eighty years old at this time and, like Sir Winston Churchill, he is living proof of the fact that in law-abiding countries, politics form a healthy occupation. Mr. Huq was born in 1873 and is a graduate in science and in law. He has been a university professor, a Deputy Magistrate and a legal practitioner. As far back as 1924 he was Education Minister in undivided Bengal. He has been a prominent member of the Muslim League; he is the founder of the Krishak Praja Party and a founder of the Krishak Sramik Party. He can, perhaps, be described as a man of mercurial and irrepressible spirits along with unquenchable mental energy. Among political colleagues and rivals, he has been the object, at various times, of mud-slinging such as any other man would find intolerable, but Mr. Fazlul Huq emerges from these bombardments, undismayed and full of new ideas. Whatever else may be said of him, there is no doubt that he occupies a genuine place in the hearts of the poor of Bengal for, when in office, he has shown himself to be a man with a real sympathy for the unfortunate.

On 2 April, 1954, Mr. Huq formed a Government in East Bengal and thereafter he visited Karachi for discussions with the Central Government. He returned to Dacca on 28 April, where he expressed himself satisfied with his talks and particularly with the promise of substantial financial assistance for the Province which had been made to him. It was shortly after this that the storming of Dacca Jail, to which reference has already been made,

took place and it is from this point onwards that matters began to take a disquieting turn.

It was admitted by the Prime Minister, in a speech to the Constituent Assembly on 28 June, 1954, that when he visited Karachi after forming his Government, Mr. Huq plainly informed the Central Government that he was of the view that there should be greater provincial autonomy and that the Centre should be weak; but he also said that there were disruptive elements at work and that the Centre should be strong enough to deal with them. Whether it was intended to reinforce his views as to the position at the Centre; whether it was a reflection of the glances sometimes made from East Bengal to West Bengal (or *vice versa*) or whether it was merely another instance of Mr. Fazlul Huq throwing off an idea that had just occurred to him will, perhaps, not be known, but within a week of his return to Dacca, Mr. Huq made a plea for co-operation between East and West Bengal.[1] West Bengal is, of course, a part of India and matters of co-operation of this nature belong to the portfolio of Foreign Affairs and Commonwealth Relations which is held at the Centre. From this occasion also may, perhaps, be traced a report appearing in India of a move for talks between Mr. Jawaharlal Nehru and Mr. Huq.[2]

Mr. Huq then engaged himself in enlarging his Cabinet and on the very day on which the additional members were being sworn-in, news was received of violent rioting which had broken out among the thousands of workers employed at the Adamjee Jute Mills, located at a place called Narayangunj, about four miles from Dacca.

The Adamjee Jute Mills, like the Karnaphulli Paper Mills, form an enormous project in Pakistan's industrialisation programme. The Mills are an entirely modern plant and they utilise the raw jute grown in East Bengal. The opening of these Mills, of which the two units comprise no less than two thousand looms, represented the first major step towards Pakistan's independence of foreign manufacturers of jute goods and there could be no doubt that some considerations of strategy had suggested the Adamjee Jute Mills as a focus of trouble.

The police, effectively hindered in their work by a Minister of Mr. Huq's Cabinet[3] were unable to control the situation and the Armed Forces were called upon to assist in restoring order.

[1] *Morning News*, Karachi, 5 May, 1954.

[2] *The Times of Karachi*, Karachi, 16 May, 1954.

[3] See Prime Minister's speech to the Constituent Assembly, 28 June, 1954.

Loss of life, which included many women and children, ran into hundreds and the whole affair was marked by the barbarities which seem invariably to accompany such outbreaks. Fires were started in the quarters of the workers attacked and all the fire brigades in Dacca and Narayangunj were requisitioned.[1] By the following day, seventy-two persons, ringleaders in this disastrous violence, had been arrested.[2] It was suggested in East Bengal that the trouble in the Adamjee Jute Mills had been deliberately fomented in order that the new Government in East Pakistan should, at the outset, become the object of adverse criticism. It was said that bad feeling between local Bengali workers and refugee workers (mostly Muslims from Bihar; India) had been promoted by the management of the Mills and by vested interests in Karachi.[3]

The Prime Minister, Mr. Mahomed Ali, however said that the riots were the result of a "foul conspiracy" developed by Communists and others, outside Pakistan, and were inimical to the country.[4] The Karachi Branch of the Muslim League passed a resolution demanding that Section 92-A of the Government of India Act, 1935, which authorises the Governor-General, in the case of grave emergency, to issue a proclamation authorising the Governor of the Province to assume all the powers vested in any provincial authority (in other words, the Governor assumes all the reins of government) should be imposed in East Bengal. These undemocratic sentiments from a democratic body were, perhaps, inspired as much by the smart of defeat as by the necessities of the occasion.

It was impossible to ignore the significance of the train of happenings and, on 17 May, the Central Government sent to the East Bengal Government a directive issued on the authority of Section 126(*v*) of the Government of India Act, as applicable to Pakistan. This Section empowers the Central Government to issue to a Provincial Authority directions as to the manner in which the executive authority is to be exercised in the Province for the purpose of preventing any grave menace to the peace, tranquillity or economic life of the Province.

The directives were not particularly onerous, having in mind the several occasions on which the civic life of East Bengal had been disturbed. Briefly, they called upon the Provincial Government

[1] *Pakistan Post*, Dacca, 16 May, 1954.
[2] *Ibid.* 17 May, 1954.
[3] *Ittefaq*, Dacca, 16 May, 1954.
[4] *Morning News*, Karachi, 18 May, 1954.

to transfer, temporarily, to the Army, operational control of all units of the East Pakistan Rifles while all Communists and mischief-mongers were to be arrested. A watch was to be kept on the Indian border to prevent infiltration of undesirable persons. Fourthly, the co-operation of the local Press was to be sought and where that was not forthcoming, measures were to be adopted to prevent any section of the Press from exploiting the tension in the Province. Measures were to be taken to protect important industrial undertakings and vital points such as docks and railways and such places were to be declared "protected areas". The Central Government also wanted to make arrangements to ensure that adequate intelligence reports would be received and that wrong-doers would be punished. Lastly, it was desired that daily reports on the situation should be telegraphed to Karachi.[1]

Although, as has been said, the directives were not particularly onerous, it is evident that in some respects they might prove uncomfortable, especially in view of the activities of some of Mr. Huq's Cabinet colleagues. At all events, Mr. Huq and his Cabinet did not take kindly to these instructions from the Central Government and he expressed the desire to discuss the matter with the Prime Minister. In consequence, Mr. Huq again visited Karachi, this time accompanied by some of his Ministers. The conversations which then took place revealed to the Central Government that there was no assurance that Mr. Huq's Government would implement the directives which had been issued.[2]

Mr. Huq went back to Dacca and thereafter paid a short visit to Calcutta, a city in which he doubtless has many friends, and he there indulged in utterances which could not but alarm Pakistanis as a whole. At a reception given to Mr. Huq by the Shanti Sena Committee in Calcutta, he said that he hoped, with the help of the people of India to remove the artificial barriers that had been created between the two Bengals; and at the Sarat Bose Academy he remarked: "I do not believe in the political division of a country" and again, "I am in fact not familiar with the two new words, Pakistan and Hindustan".[3] It was on the strength of these observations that the Prime Minister in his broadcast to the nation on 30 May 1954, described Mr. Huq as a traitor to his country and to his Province. Mr. Huq was also reported to have questioned whether the riots in the Adamjee Jute Mills could correctly be ascribed to the circumstances mentioned by

[1]See speech of Prime Minister to the Constituent Assembly, 17 July, 1954.

[2]Prime Minister's broadcast 30 May, 1954.

[3]Prime Minister's speech to the Constituent Assembly, 28 June, 1954.

the Central Government and he suggested that these shocking incidents had taken some years in which to develop[1].

When Mr. Huq returned to Calcutta, he was asked by the Governor of East Bengal whether, in these statements, he had been misreported and advised him, in such case, to issue a clear contradiction as soon as possible. On 10 May, therefore, Mr. Huq issued a statement to the effect that the division of India was an established and geographical fact and that Pakistan had come to stay. He added: "The sovereignty and integrity of Pakistan will be defended by myself and every true Pakistani".[2]

Thirteen days later, the "New York Times" published an account of an interview with Mr. Huq by its correspondent in Karachi, accompanied by a representative of Reuters, in which Mr. Huq and stated: "Independence will be one of the first things to be taken up by my Ministry". Mr. Huq claimed that he had been misreported, but he was confronted by the Prime Minister with the two journalists in question and both of them asserted, with reference to their notebooks, that they had reported Mr. Huq accurately and neither of them would give way under Mr. Huq's questioning.[3]

This entirely unsatisfactory situation existing between the Central Government and Mr. Huq's Government in East Bengal was resolved, on 30 May, by the appointment of Major-General Iskander Mirza, at that time Secretary to Government in the Ministry of Defence, as Governor of the Province and also by a proclamation by the Governor-General by which the administration of East Bengal was taken over under Section 92-A of the Government of India Act. At the same time, Mr. Huq's Ministry was dismissed. That evening, the Prime Minister explained, in a national broadcast, the circumstances which led to this decision.

Major-General Iskander Mirza, who began life as a regular soldier but who for many years had been a civilian administrator, found, on his arrival at Dacca that the administration had been undermined, partly by incompetence at the top administrative levels and partly by gross interference, with the day-to-day work of the civilian officials, by the newly-elected representatives of the people. Substantial changes were made. The earlier directives of the Central Government were put into operation and many people

[1] *The Times of India*, Bombay, 22 May, 1954.
[2] Prime Minister's broadcast, 30 May, 1954.
[3] *Ibid.*

were arrested for subversive activities or on suspicion of having been engaged or connected with such activities. By the middle of July, 1,293 people had been arrested and out of them 491 had been released after examination.[1] Considerable effort was made to restore confidence among civilian magistrates and officials working in the outlying districts, but in local political circles there was a good deal of resistance to the work of the new administration.

In July, it became necessary to confine Mr. Huq to his house. On this occasion he expressed repentance for such of his utterances as reflected on his loyalty to Pakistan. He added; "On account of my old age, I am retiring from public life"[2] an observation which some regarded as a promise and others as a threat but which, in any case, nobody quite believed.

From the point of view of the constitution, there is nothing to be added at this point, as far as the troubles of East Bengal are concerned, but it is convenient to mention that in February, 1955, the Awami League found itself at loggerheads with the other member-parties of the United Front and a vote of no-confidence in Mr. Huq was moved by a member of the Awami League.[3] These party differences led to the situation in which Mr. Huq continued as leader of the United Front which no longer included the Awami League and the latter continued its activities independently under its leader, Mr. Suhrawardy.

Meanwhile, at the Centre, drastic changes had occurred and to them attention must now be turned.

[1]Prime Minister's speech to the Constituent Assembly, 17 July, 1954.
[2]*Dawn*, Karachi, 24 July, 1954.
[3]*Pakistan Times*, Lahore, 8 February, 1955.

CHAPTER VIII.

DISSOLUTION OF THE CONSTITUENT ASSEMBLY

As we have seen, the Constituent Assembly, in the midst of these disturbing incidents in East Bengal, was endeavouring to prepare a constitution and a Drafting Committee had been set up. Nevertheless, all this was being done against a background of disquiet, especially in the Constituent Assembly itself where, among some of the members, the idea was fostered that if the Governor-General could once dismiss a Ministry, under Section 10 of the Government of Indian Act, he could do it again. Indeed, at the very time that Khwaja Nazimuddin was dismissed from office, the question had been asked whether the Governor-General could exercise the power conferred upon him by Section 10, other than with the advice of his Council of Ministers. Evidently, the point was enquired into in London and it was reported that a spokesman of the Commonwealth Relations Office had said, on the occasion of Khwaja Nazimuddin's dismissal, that the change, as announced by Mr. Ghulam Mohamed, was constitutionally correct.[1]

On 6 July, 1954, the Constituent Assembly passed an Act amending the Government of India Act by which a new section[2] was to be inserted. This amending act gave power to every High Court in Pakistan to issue what are called "prerogative writs", a form of legal process which is familiar in every country where the Common Law prevails. The Act was conducted through the House by the then Law Minister, Mr. A. K. Brohi, who defined the nature of the writs it was proposed to authorise, namely, *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*. There is no doubt that provisions of a similar nature had been recommended in the Reports of the Basic Principles Committee and to this extent, therefore, the Act was merely anticipating what was intended to be done in the new constitution. It is also worth mentioning that the constitution of the Indian Republic also authorises High Courts to issue similar writs. The Law Minister explained to the House that the prerogative writs are one of the bulwarks which guarantee and maintain the freedom of the citizen and although there was some feeling in the House that the provision of these constitutional rights was premature, nevertheless the Bill was passed by the Assembly.

[1]*Dawn*, Karachi, 19 April, 1953.
[2]Section 223A.

Following this, in September 1954, the Assembly repealed the Public and Representative Offices (Disqualification) Act of 1949. A few words about this Act helps to explain the significance of this repeal and the trend of events in general. The Act was originally introduced to enable men, holding public office, to be examined and, if necessary, punished, in respect of acts of maladministration committed by them and its purpose was to enable persons who had abused public office but who, on technical legal grounds, could not be proceeded against in the courts of law, to be adequately and suitably dealt with. By this Act, complaints could be made to the Governor-General or to the Governors of Provinces who, if satisfied with the substance of the allegations made, could order an inquiry which had to be conducted by judges of the High Court. If the complainant failed to make out a *prima facia* case, the cash deposit, which was required to be made at the time of submitting the complaint, was forfeit. If, however, after inquiry, it was found that there had been acts of maladministration or abuse of office, punishment was inflicted in the form of suspension from the right of holding public office for a specified number of years.

From the time the Act had become law, it had been invoked on a number of occasions and persons had been punished within the terms of its provisions. At the time of repeal, several men, holding or who had held public office, were the objects of complaint made under the Act or were threatened with proceedings and the Act of repeal included a provision whereby all proceedings pending before the Governor-General, or the Governor of a Province, were to be deemed to have been dropped. The Bill in which this repeal was proposed, came before the Constituent Assembly on 20 September, 1954 and was passed on the same day. On the next day, the text of the new Act appeared in the Gazette of Pakistan and in some quarters, the sighs of relief were said to be audible. However that may be, the expedition with which the Act was passed was exemplary and certainly worthy of a better cause.

On the day following this enactment, namely, on 21 September, 1954, the Constituent Assembly purported to make another important change to the existing interim constitution. In a speech of less than two-hundred and fifty words, a member of the House introduced a Bill of which the effect was to amend Section 10 of the Government of India Act, by virtue of which the Governor-General had summarily dismissed Khwaja Nazimuddin from his Prime Ministership. It was explained that the effect of the amending Act would be to bring the interim constitution into line with what was proposed for the country's new constitution and,

according to the words of the member introducing the Bill, it would "revitalise our political life and re-establish our reputation of being a democratic country".[1] It only remains to be added that the Bill was passed in the course of a few minutes.

These important changes were effected without previous indications to the public and in the absence of the Governor-General who, at the time, was resting in Abbottabad, a hill-station some hundreds of miles from Karachi. This point is reinforced by the fact that according to the printer's data which appears on the Bill, it was printed on 20 September, that is, the day before the Bill was moved in the House. The Prime Minister was in Karachi and attended the Constituent Assembly on the same day that the Bill to limit the powers under Section 10 was passed. Indeed, it was on that very day that the Prime Minister moved the adoption of the Report of the Basic Principles Committee in order that Pakistan might be declared an Islamic Republic on 1 January, 1955.[1(a)]

The haste which marked the passage of these two Acts is further demonstrated in that the second of them[2] was published in the Gazette of Pakistan on the day of its passage in the House. It cannot be said that such prompt publication was unprecedented, but it can be said that out of fortyfour Acts, previously passed by the Assembly in its constitutional aspect, only four had been published with similar expedition. The importance of this point lies in the fact that according to the rules of the Assembly, an Act was not law until it had been so published.

These circumstances were not lost upon an observant public, and the month of October in that year began in an atmosphere of bewilderment and brooding. The repeal of legislation by which the conduct of public men might be controlled and by which the powers of the Governor-General were summarily clipped could not but be taken as a presage of the determination of the Constituent Assembly to remain in office as long as it felt so disposed and without interference from any member of the public whose confidence it was rapidly losing. More than seven years had, in fact, passed since this Constituent Assembly was first created and more than six years had passed since Quaid-i-Azam Mohamed Ali Jinnah had foretold that from eighteen months to two years would be necessary to enable the Constituent Assembly to conclude its

[1] Constituent Assembly Debates Vol. XVI, No. 31, p. 499.

[1(a)] *Ibid.* p. 504.

[2] The Government of India (Fifth Amendment) Act, 1954.

stupendous task. Moreover, despite the debates on the Report of the Basic Principles Committee and the appointment of the Drafting Committee, there was no real promise of a constitution which had the approval of the country as a whole. The endeavours of the Constituent Assembly to assert its position as the guardian of democracy in Pakistan were, by and large, interpreted as the negation of democracy since the effect was to make it possible for the Assembly to continue without risk of interference by the Governor-General in whose absence from Karachi, it was significantly noticed, these constitutional measures had been rushed through the House. The political atmosphere was permeated with disquiet for it seemed that the country was simply moving from one crisis to another.

According to a later speech of Mr. Mahomed Ali, the then Prime Minister, these legislative changes and the abrogation of what he described as "constitutional safeguards which vested certain powers in the Governor-General" led to a storm of protest in the country.[1] Despite the storm of protest, however, Mr. Mahomed Ali nevertheless felt it necessary to proceed on a visit to the United States and Canada in order to discuss with President Eisenhower and other policy-makers in the United States Government, matters of interest to the two countries and also to discuss the extent of the economic and military aid that Pakistan should receive.[2] Although, as we shall see, the Governor-General supported Mr. Mahomed Ali with a loyalty that seems to have been scarcely deserved, it is difficult to find anything in this episode that reflects any great credit on the Prime Minister and it is from this time onward that his ultimate disappearance from high office in the Government seemed inevitable. This is a matter which will call for further comment. Meantime, Mr. Mohamed Ali was obliged to cut short his visit to the New World and hasten back to Karachi.

Soon after the Prime Minister's return the Governor-General acted. On 24 October, 1954, he issued a proclamation declaring a state of emergency throughout Pakistan. In this document it was recorded that the Governor-General had come to the conclusion that the constitutional machinery had broken down and that the Constituent Assembly had lost the confidence of the people. It was therefore intended to hold fresh elections as soon as possible and, until that time, the Prime Minister had accepted an invitation to re-form his Cabinet in order to give the country a vigorous and stable administration.

[1]Prime Minister's broadcast to the nation, 1 November, 1954.
[2]*Ibid.*

In the new Cabinet, Choudhary Mohamed Ali continued as Finance Minister; Major-General Iskander Mirza came from East Bengal to take up the portfolio of Minister of the Interior, and the Commander-in-Chief of the Army, General Ayub, became Defence Minister. With the Governor-General himself a former civilian official, it was not suprising that many people inferred that the civilian and military administrators had been compelled to take over from incompetent politicians and, to some extent, there was truth in it, which is a point to be examined later. What was not true was the assertion that the Governor-General's aim was to establish a disguised dictatorship backed by the Armed Forces. There has never been any reason to suppose that Mr. Ghulam Mohamed has nourished the hope of becoming a dictator since that aspiration is alien to his training in public administration and to his personal inclination. In interpreting the actions of Mr. Ghulam Mohamed it is necessary always to remember that he possesses talents of a high order and has a brain that moves quickly and clearly. He has no time in which to excuse incompetence and stupidity. These characteristice do not necessarily make him a better or more popular public man, but they do explain the unwavering determination with which he pursues his policies. His fund of patience is slender and it is not difficult to imagine his wrath as he watched the Constituent Assembly pass from one blunder to the next. Secondly, it was clearly stated by General Mirza, in an interview with *The Daily Telegraph* of London, published on 12 November, 1954, that the Army did not wish to be involved in politics. This claim was later borne out when the Commander-in-Chief did not seek election to the new Constituent Assembly.

It was significant that the new Cabinet included Dr. Khan Sahib as Minister of Communications. Dr. Khan Sahib, along with his perhaps more celebrated brother, Khan Abdul Ghaffar Khan,[1] had originally opposed the Pakistan conception and when its creation became inevitable, Khan Abdul Ghaffar Khan proposed a further partition by which the Pathans of the North West Frontier should be independent. As it happened, in a referendum conducted under British auspices at the time of partition the Pathans voted overwhelmingly in favour of Pakistan[2], and for some years, the two brothers were prevented from carrying on any political activities in Pakistan and from moving freely about the country. Dr. Khan Sahib was welcomed in the Cabinet, partly for his

[1] Founder of the Khudai Khidmatgars (Servants of God) and at one time known as *The Frontier Gandhi.*

[2] To keep the record clear, it must be added that the North West Frontier Province was not offered the choice of becoming independent. In terms of the partition settlement there was no reason for such an offer.

ability and integrity but mostly to assist in implementing the scheme for the consolidation of West Pakistan, a subject which will in due course be dealt with.

There could be no doubt that the new Government started its career with the intention of being firm. The new Minister of the Interior gave a statement to the Press in which he expressed the view that for some years to come, Pakistan would have to be governed by means of what he described as "controlled democracy". He had a word also for the *ulema* and he said that "If the learned maulanas try to dabble in politics, there will be trouble". Finally, he added a word about the form that the constitution might take and he said that the attempt to work democracy on British lines made during the last seven years, had led to disaster.[1] The "learned maulanas" lost no time in publishing a rejoinder which appeared in the Press on the next day.[2]

In the *Daily Telegraph* interview of 12 November, General Mirza was also reported as having said that Pakistan is not yet ripe for democracy as the word is understood in the United States and the United Kingdom. He seemed to favour a flexible constitution such as exists in Great Britain. He also made a reference to the principle of parity between East and West Pakistan which would be retained despite the fact that East Pakistan had the larger population.

The expression "controlled democracy" excited some perturbation both in Pakistan and abroad and this, at a Press conference on 5 December, 1954, called forth from the newly appointed Secretary to Government in the Ministry of Information and Broadcasting, some attempt at an explanation. He sought to justify the expression "controlled democracy" by describing the systems of government that now prevail in the United Kingdom and in the United States, as examples of controlled democracy. This explanation does not seem consistent with the remarks of General Mirza as reported in the *Daily Telegraph* of 12 November, 1954 and in any event, it appears improbable that many people in the two countries named would agree that the democratic systems of government they enjoy in any way represent democracy which is controlled, unless one has in mind the control on public and private action imposed by the law or by economic and financial regulations of various kinds, but it is doubtful if this is what is meant.[3]

[1]*Dawn*, Karachi, 31 October, 1954.

[2]*Ibid.* 1 November, 1954.

[3]See Constituent Assembly Debates 1955, Vol. I, No. 2, p. 40.

Nevertheless, there is substance in what Major-General Mirza had to say and in considering affairs in India and in Pakistan, it is well to remember that at the time of partition both of these countries plunged from a fourteen per cent franchise to a system of universal, adult suffrage. The latter is, no doubt, a true mark of modern democracy but this drastic electoral change was made overnight whereas in most countries, universal adult suffrage has been achieved over a period of time. In Great Britain, which is generally allowed to be a fair example of a competently managed democracy, extension of the franchise has clearly followed the extension of popular, free education so that by the time people obtained the vote they were also literate. Indeed, it is true to say that in Europe education came to the people before their share in political affairs. In Pakistan the reverse is true and everyone is armed with a vote but not with the means of reading the candidates' names on the ballot paper. It is not suggested that the vote, having once been given, can be taken back nor is it suggested that this would be a desirable thing to attempt. The only way to correct the situation that has been created is to educate people as quickly as possible, but in the meantime, it is also possible, even probable, that situations will arise demanding administrative measures which would be unthinkable in western countries, but which may be necessary to avert crisis in countries where people are poorer and, being illiterate, too easily amenable to influences persuasive but not the less inimical to their interests. These observations are equally true of the Indian Republic.

General Mirza's observations regarding the nature of Pakistan's constitution, in relation to the British method were, again despite the *Daily Telegraph* interview, repeated in a recorded interview broadcast by the British Broadcasting Corporation. He then said that Pakistan's efforts to utilise the British political system had not proved successful and that it was proposed to adopt the American constitutional system with modifications.[1]

Many people found in these remarks evidence of the continuing disposition of Pakistan to become more and more closely connected with the United States. While it is true that Pakistan has entered into a Treaty of Mutual Assistance with the United States[2] and while it is true that Pakistan has received, from the United States, generous assistance at moments of economic difficulty, it is superficial to assume that for these reasons alone, Pakistan has had it in mind to abandon the system inherited from the British and to look

[1]*Pakistan Standard*, Karachi, 27 January, 1955.
[2]Treaty dated 19 May, 1954.

to the United States for ideas on constitutional matters. It should be remembered that, on the whole, Pakistan has been more fortunate in Governors-General than in Prime Ministers and the idea that the Head of the State should also be the Chief Executive was, for this reason, considered to offer prospects of a workable solution to some of Pakistan's difficulties. It must however be added that since these pronouncements of General Mirza, the point has not been greatly insisted upon by those who have been actively concerned in these matters.

On 1 November, the Prime Minister delivered his usual "first-of-the-month" broadcast address to the nation in which he gave an assurance of clean, honest, efficient, and vigorous administration. He made a reference to democracy and the early restoration of Parliamentary life as well as the preparation of a constitution. In the last mentioned respect he added: "I hope there will be no deviation from the already accepted principle of giving an Islamic character to our constitution". The nature and significance of these words can scarcely be misunderstood. He claimed that the country as a whole was pleased that the Constituent Assembly had been dissolved and that a sorry chapter in the history of Pakistan's constitution had been closed. He gave a hint of the intention to unify West Pakistan and he poured ridicule upon the suggestion appearing in some foreign newspapers, that at the time of the Governor-General's proclamation, conditions of "near civil war" had existed in Pakistan. On this point, the Prime Minister was supported by the Governor-General who, in a reply to an address of welcome presented to him on the occasion of a reception given in his honour by the Karachi Municipal Corporation, said that stories to the effect that he had coerced the Prime Minister into agreeing with the Governor-General's action were baseless.[1] It no longer seems necessary to pursue this point, especially in view of the subsequent course of events, but in those days, however much the Governor-General and the Prime Minister might be in agreement, few people in Pakistan had any doubt as to where the will and the determination lay.

This will and this determination expressed themselves in a series of pronouncements and ordinances published at great speed so that some separation into chapters is necessary if confusion is to be avoided. In the meantime, the action of the Governor-General was challenged in the Courts and the case of Maulvi Tamizuddin Khan versus the Federation of Pakistan and Others was a *cause-celebre* requiring consideration by itself.

[1]Speech made by H. E. Governor-General at the Karachi Municipal Corporation's reception on 12 November, 1954.

CHAPTER IX.

MAULVI TAMIZUDDIN KHAN'S CHALLENGE AND ITS CONSEQUENCES.

Following the Governor-General's proclamation by which the Constituent Assembly was dissolved, Maulvi Tamizuddin Khan, as its President, petitioned the Chief Court of Sind asserting that the dissolution was illegal and asking for a writ of *mandamus* to restrain the respondents from interfering with the exercise of his functions as President of the Assembly and for a writ of *quo warranto* with a view to determining the validity of certain appointments of individuals to the Governor-General's Council of Ministers.[1]

On 7 November, 1954, Maulvi Tamizuddin Khan made his application[2] on the Extraordinary Special Jurisdiction Side of the Sind Chief Court in which it was alleged that Major-General Iskander Mirza had informed the petitioner on 26 October, 1954 that the Constituent Assembly had been dissolved and that the petitioner, along with members of the Constituent Assembly, had been forcibly prevented from entering the Constituent Assembly Building. On these, and some other less material allegations, Maulvi Tamizuddin Khan asked, adducing certain reasons set out in the application, that the writs of *mandamus* and *quo warranto* be issued.

Against the application, a number of objections were raised including the assertion that the constitutional machinery had broken down and that, if any proof were needed, the respondents were prepared to show that the Constituent Assembly had lost the confidence of the people and that it could no longer function in accordance with the Indian Independence Act of 1947 by which it had come into being. It was further objected that the writs asked for could not issue because the Act[3] by which the grant of such writs had purported to be authorised, had not received the assent of the Governor-General and therefore the Act was not law and the Chief Court of Sind had no jurisdiction to issue such writs. The Act referred to is, of course, one that had been passed in the Assembly in the immediately preceeding month of July.

[1]Maulvi Tamizuddin Khan's case *supra*.
[2]Writ Petition No. 43 of 1954.
[3]Government of India (Amendment) Act 1954.

A full Bench of the Chief Court of Sind decided unanimously in favour of Maulvi Tamizuddin Khan, but the issue of the writs was suspended for fifteen days while the case went to appeal before the Federal Court of Pakistan where, on the issue of the Governor-General's assent only, the case was decided, by a majority of four judges to one, in favour of the Federation of Pakistan and against Maulvi Tamizuddin Khan. The judgement of the majority was delivered by the Chief Justice of Pakistan, while the dissenting judgment was given by Mr. Justice Cornelius. Both are worthy of the gravity and magnitude of the issue that went before the Court.

It would be presumptuous as well as superfluous to discuss here the legal ratiocination involved in this difficult and delicate case, but, considered from the historical point of view, as well as by way of illustration of the difficulties which have assailed Pakistan, some account of the question of assent may be here set forth.

The principle of assent is certainly familiar in all countries of the Commonwealth. It stems from the centuries-old constitutional doctrine that laws are made by the King-in-Parliament and no enactment becomes law until the assent of the Monarch is given. That the royal prerogative includes the right to negative legislation is abundantly well established although the exercise of that prerogative has become a remote contingency in these times. However, the fact is that until the Royal Assent has been intimated at a ceremony which takes place in the House of Lords, an Act passed by Parliament, no matter with what unanimity and determination, is not law.

It is evident that the same doctrine has been carried to all the dominions and colonies of which Great Britain became possessed as the empire grew. Section 32 of the Government of India Act, 1935, clearly provides that assent is necessary if legislative measures are to become law[1]. Reference is also made in the Indian Independence Act, 1947 to the exercise of the prerogative of assent in His Majesty's name, but to go further on this particular point would involve a discussion of the very issue on which the Federal Court has pronounced judgement. It is, furthermore, interesting to observe that the Constitution of the Indian Republic provides that legislation must have the assent of the President. (In making these comparisons with India, it is not suggested, nor is it intended to be suggested, that Pakistanis are or ought to be influenced by what India does or has done. These comparisons are made because

[1]This section was temporarily omitted from the Act as adapted for Pakistan by Emergency Powers Ordinance IX of 1955.

they have interest and some point). Finally, it must not be forgotten that both reports of the Basic Principles Committee of Pakistan have included a recommendation that after going through Parliament, Bills should be presented to the Head of the State for his assent.

Thus it may be said that the doctrine of assent is not only familiar to Pakistan but if the Reports of the Basic Principles Committee have any meaning and value, this doctrine in itself is not repugnant to the country. The question of whose assent is required, is, of course, a separate matter upon which something will shortly be said. Meanwhile, there is a history attaching to the subject in Pakistan which the Chief Justice thought it necessary to mention in his judgment.[1]

On 15 May, 1948 (in the lifetime of Mr. Jinnah who was, it will be remembered, both General-General and President of the Constituent Assembly) Sardar Abdur Rab Nishtar moved an amendment to the Rules of the Constituent Assembly of which the effect was that when a Bill had been passed by the Assembly, it should be presented to the President for his assent.[2] Sardar Abdur Rab Nishtar explained that under the pre-partition Rules, a Bill, after being passed by the Legislature had to be authenticated by the President by whom it was sent to the Governor-General for assent. He stated that it was not desired that laws made by the Pakistan Constituent Assembly should be assented to by some outside authority and therefore it was desired to change the word "sign", contained in the Rule, to "assent".

This motion was immediately followed by a further motion that consideration of the proposal should be adjourned which was agreed to. A week later, the matter came again before the House.[3] It was then proposed by Khan Sardar Bahadur Khan that the original motion should be amended so that the Rule would read: "When a Bill is passed by the Assembly a copy thereof shall be signed by the President and it shall become law on being published in the Official Gazette of Pakistan under the authority of the President". It was explained by the mover that the purpose was identical with that of Sardar Abdur Rab Nishtar's original motion and the amended form was accepted.

In spite of Sardar Bahadur Khan's explanation that the purpose of the Rule, as amended by his proposal, remained the same

[1] Maulvi Tamizuddin Khan's case p. 295.

[2] Pakistan Constituent Assembly Debates Vol. III, No. 1, p. 9.

[3] *Ibid.* No. 3, p. 45.

as that of Sardar Abdur Rab Nishtar, it remains an extraordinary thing that the word "assent", considering all its historical and legal implications, including the very implications that the Constituent Assembly desired to remove, should have been rejected in the amended Rule. The legal aspect of this was discussed in the judgement of the Chief Justice, but for the present purpose it may be said that the result was to create confusion and this particular matter forms an excellent example of what the Chief Justice had to say about the thoughtless manner in which the Constituent Assembly proceeded about its business and the straits to which it had brought the country.[1] This view is substantially supported by the remarks of the permanent head of the Law Ministry,[2] made after the Federal Court judgement was announced, in which it was said that the Law Ministry had previously advised the Government that the assent of the Governor-General to enactments was necessary in order that they should become law.[3]

It is significant that these purported changes in the Rules of the Assembly regarding assent and authentication of enactments were made during the time of Mr. Jinnah and, having regard to his clear appreciation of the constitutional position of the Governor-General, to which reference has been made in an earlier chapter, it seems that the substitution of authentication for assent was intended to make the amended Rule conformable to the position with respect to the interim constitution.

Some sporadic and anonymous attempt was made to suggest that the Federal Court had "obliged" the Governor-General, but all the evidence goes to show that the Court was subject to no external influences in arriving at its decision. In the first place, the dissenting judgment of Mr. Justice Cornelius was couched in language sufficiently vigorous as to show that every judge was free to form his own opinion of the matter. Secondly, the majority judgment was not, in some respects, a popular judgment and the Chief Justice foresaw that this would be the case when he said: "I am conscious that in thus interpreting the Constitution of Pakistan and emphasising the incidents that attach to it as a Dominion, I am going against a layman's ideal of an "independent Dominion" the implications of which were not fully understood even by the wise and experienced members of the Constituent Assembly, though some of them were prominent members of the legal profession . . ."[4]

[1] Maulvi Tamizuddin Khan's case, p. 299.

[2] At the time, Sir Edward Snelson, K.B.E.

[3] *The Times of Karachi*, Karachi, 23 March, 1955.

[4] Maulvi Tamizuddin Khan's case, p. 312.

Indeed, so accurately did the Chief Justice foresee what the public view of the majority judgement might be that later on, when giving an advisory opinion on certain matters referred to the Federal Court by the Governor-General, he felt it necessary to say: "The words, "Crown", "King", "Queen", "His Majesty", "Her Majesty", "Prerogative" etc., are mere legal abstractions. . ."[1] It is difficult for those inadequately schooled in metaphysics to think of a young and charming Queen as a "legal abstraction", but the Chief Justice was doing no more than giving point and emphasis to the impatience of the people of Pakistan for a properly drafted constitution and for the end of uncertainty and doubt which had plagued the country for so many years.

Thirdly, it must not be thought that the decision in Maulvi Tamizuddin Khan's case neatly and sufficiently cleared the way for the Governor-General to proceed with what some people were disposed to think of as a high-handed disregard of democratic institutions, and without further legal complications at that. On the contrary, the effect of Maulvi Tamizuddin Khan's case was to raise a number of difficult legal complexities because if, as had been decided by the Federal Court, assent to enactments was necessary in order that they should become law, what was the position as to the many enactments which had been passed and which had not received assent?

In all of these circumstances, it is quite impossible to deduce that the Federal Court was in any way influenced. All it had done was to reverse the decision of the Chief Court of Sind on the issue of assent alone, leaving in the air all the other pleas of the Governor-General, as submitted to the Court, along with several other important consequential problems. Indeed, the Chief Justice said: "It is a mistake to suppose that we were not aware of the far-reaching consequences of the decision in Mr. Tamizuddin Khan's case. I referred to this aspect of the matter at pages 69 to 74 of my judgement and concluded with the following observations: 'I am quite clear in my mind that we are not concerned with the consequences, however beneficial or disastrous they may be, if the undoubted legal position was that all legislation by the Legislature of the Dominion under subsection (1) of section 8 needed the assent of the Governor-General. If the result is disaster, it will merely be another instance of how thoughtlessly the Constituent Assembly proceeded with its business and by assuming

[1] Federal Court of Pakistan, Report on Special Reference No. 1 of 1955, made by His Excellency The Governor-General of Pakistan, Lahore, 1955, p. 64.

for itself the position of an irremovable Legislature, to what straits it has brought the country'."[1]

The decision in Maulvi Tamizuddin Khan's case and the events which followed provided evidence that the Governor-General had no aspirations towards overriding the law and that on the contrary he was anxious to ensure that what was to be done should be done within the framework of the law and the constitution as it then stood.

Six days after judgement was given in Maulvi Tamizuddin Khan's case, the Governor-General, purporting to act under Section 42 of the Government of India Act, promulgated the Emergency Powers Ordinance IX of 1955 by which it was sought to validate and give retrospective effect to certain Acts which had not been assented to. In an appeal which came before the Federal Court a few days after this,[2] the Crown sought to rely upon this very Ordinance; but the Court in a brief and unanimous judgement held that the Governor-General could not validate constitutional legislation, since such legislation could only be effected by the Constituent Assembly to which the Governor-General could assent[3]. On the later occasion, the Chief Justice drew attention to the point that has been mentioned earlier in this chapter, namely, that the Federal Court had recorded no finding as to the breaking down of the constitutional machinery or that the Constituent Assembly had been rightly dissolved and so on[4]. In a word, Pakistan was by no means out of its legal troubles, leave alone the political.

On 15 April, the Governor-General, presumably in pursuance of his undertaking that the people would decide all issues, including constitutional issues[5], summoned a Constituent Convention for 10 May, 1955 whose purpose was to make provision as to the constitution of Pakistan. On the next day, the Governor-General issued a further proclamation assuming to himself, until such other provision should be made by the Constituent Convention, such powers as were necessary to validate and enforce laws needed to avoid a breakdown in the constitution and administrative machinery of

[1] *Ibid*. p. 5.

[2] Usif Patel vs. The Crown, P.L.D. 1955, Federal Court 397.

[3] (*a*) It should be observed here that the national Budget was certified on 31 March, 1955 by the Governor-General on the authority of Ordinance No. IX of 1955 that is, before the judgment in Usif Patel's case. In any event, the Budget was not a piece of constitutional legislation.

[4] Federal Court Report on Special Reference No. 1 of 1955, *supra*, p. 7.

[5] Governor-General's proclamation dated 24 October, 1954.

the country. These powers were to be exercised by the Governor-General subject to the opinion of the Federal Court on certain questions which had, in the meantime, been submitted to it.'[1] Later, some other questions, as suggested by the Federal Court, were likewise submitted.

These references to the Court may also be regarded as further evidence of the anxiety of the Governor-General to act in as constitutional a manner as possible and to respect, as far as he could, the rule of law and the will of the people—that will which, in fact, had had no opportunity of expression so far as the Central Government was concerned, since Pakistan had been created seven years earlier.

The questions were argued before the Federal Court by a formidable array of legal talent, including Mr. Diplock Q.C., and Mr. Pritt Q.C., both of whom had flown out from the United Kingdom for this purpose. The views of the Federal Court on the reference are contained in its Report and they need not be repeated here. All that is necessary to record is that the Court held that in the situation represented by the Reference, the Governor-General had, during the interim period (*i.e.*, until the new Assembly was convened, as to which an undertaking was given to the Court), power under the Common Law of civil or state necessity, of retrospectively validating the laws mentioned in the Emergency Powers Ordinance No. IX of 1955 and these laws were enforceable until the question of validation was decided by the Constituent Assembly. In other words, the question of validation is, ultimately one for the Governor-General and the Constituent Assembly who, together, form the government of the country.

It was, further, the opinion of the Federal Court that because the previous Constituent Assembly had failed, after more than seven years, to carry out its duty of framing a constitution for Pakistan, to replace the interim constitution provided by the Indian Independence Act, 1947; because the Constitutent Assembly had become unrepresentative of the people as a whole; because it had assumed the form of a perpetual Legislature and because it had asserted that laws made by it were valid without the consent of the Governor-General, he had legal authority to dissolve it. The Federal Court also expressed the view that the correct name of the Constituent Convention would be Constituent Assembly

[1] The reference was made under Section 213 of the Government of India Act, 1935.

and that the Governor-General's right to dissolve the Assembly can only be derived from the Indian Independence Act of 1947. One or two other points were also dealt with in the Report but these are not of substantial importance for the present purpose.

The Report is dated 16 May, 1955. Undoubtedly its terms cleared much more ground and made it possible for the Governor-General to proceed with his plans for convening a new Constituent Assembly and opening a path to the solution of the constitutional difficulties. But again, the way had not been made entirely plain. There remained, for example, the question of the validation of enactments and until this problem could be solved—which was only possible when a new Constituent Assembly came into being—many difficulties would remain and many people would be seriously concerned[1]. However, the legal tangle had been substantially unravelled and it is possible now to examine the course of events in the sphere of politics.

[1] As, for example, the prisoners under sentence in the Rawalpindi Conspiracy Case. They were convicted only because a statute had been passed to meet the circumstances of this affair and this particular statute was one of those requiring validation. It was a matter involving questions of civil liberties. See *Dawn*, Karachi, 10 August, 1955.

Chapter X.

THE ONE-UNIT SCHEME.

It is now necessary to go back to 24 October, 1954 and survey the developments in the field of politics after the dissolution of the Constituent Assembly. The first significant happening (apart from policy statements by members of the new Government to which some reference has already been made) was the dismissal of Mr. A. S. Pirzada's Ministry in the Province of Sind[1] and the appointment of Mr. M. A. Khuhro as Chief Minister. The dismissal was effected by the Governor of the Province on the ground of maladministration but Mr. Pirzada claimed that the only and real reason for his dismissal was that it was known that he was opposed to the One-Unit scheme.[2] Since the One-Unit scheme is a major development in Pakistan, with many constitutional implications, some brief examination of it is necessary.

The scheme refers only to the western wing of Pakistan which, as is commonly known, is divided into three Governor's Provinces, a number of former "Indian" States which have acceded to Pakistan, the Tribal Areas, Chief Commissioners' Provinces and the Baluchistan States Union. Geographically, they together form a *bloc*, homogenous, extensive in area and with some linguistic and ethnic distinctions, but with easy communications and no natural barriers or divisions. The proposal was that all these units should be integrated into an administrative whole to be known as "West Pakistan".

This is a piece of administrative rationalisation that many students of Pakistan affairs have long thought to be necessary. The views of Mr. Jinnah on the subject do not appear to have been officially recorded, but it seems clear enough that the matter did, informally, come up for consideration at a very early stage in the history of Pakistan. It seems that a suggestion on the lines of consolidation in West Pakistan was made to Mr. Jinnah by the late Sir Archibald Rowlands who was then advising Mr. Jinnah on economic affairs, and Mr. Jinnah is said to have expressed approval in principle, but he considered that at that time (November, 1947) the idea was premature in view of the many and more pressing

[1]Under Section 51(i) and (v) of the Government of India Act, 1935.
[2]*Dawn*, Karachi, 9 November, 1954.

difficulties yet to be solved.[1] This account is borne out, to some extent, by a statement made by the Chief Minister of the Frontier Province, Sardar Bahadur Khan, at a meeting in July, 1955, at Kohat, when he said that Mr. Jinnah wanted to implement a scheme on such lines by 1948.[2] There was, it further appears, a proposal to similar effect made by the Baluchistan Muslim League in December, 1947,[3] and Malik Firoz Khan Noon has also claimed to be an originator of the scheme. Whatever the facts may precisely be, there can, in view of the evidence available, be little doubt that a proposal for the consolidation of West Pakistan was present to the mind of Mr. Jinnah.

On the other side (and this has been pointedly mentioned by opponents of the scheme) Mr. Jinnah stated, before Pakistan actually came into being, that the component states or provinces of Pakistan would have autonomy.[5] Whether such *dicta* should be considered as binding for all time on the successive Governments of Pakistan is, ultimately, a matter for the electorate of the country to decide.

On the face of it, the necessity for maintaining, in West Pakistan, so many administrative divisions with Governors. Councils of Ministers and all the trappings of office that accompany such institutions seems difficult to sustain. More important perhaps than the prospect of doing away with expense in that direction, is the possibility of eliminating or, at least, reducing the unnecessary and even damaging exercise of local patronage and political manipulations, frequently founded upon purely provincial considerations. The economic interests of the units which make up West Pakistan are, in the last analysis, identical although they may sometimes wear differing aspects, and the problems of social and educational advancement are the same. It is extremely difficult to assert, with any cogency, that the North West Frontier Province requires an education policy that differs fundamentally from that of Sind or that the administration of the police in the Punjab raises considerations entirely separate from those affecting the police in Baluchistan. Minor differences, imposed by specific local conditions, there must be, but these can, appropriately and adequately, be taken care of at a level substantially lower than that of the

[1] This is the substance of what was said to the writer by Sir Archibald Rowlands in November, 1947.

[2] *Dawn*, Karachi, 27 July, 1955.

[3] See statement by Qazi Isa reported in "*Dawn*", Karachi, 26 July, 1955.

[4] *The Times of Karachi*, Karachi, 26 November, 1954.

[5] *Speeches and Writings of Mr. Jinnah*, op. cit. Vol. II, p. 429.

Governor and his Ministers. Indeed, there is a case for suggesting that in the One-Unit, a system of local government, in which the electorate can be associated, might well be set up on the lines of the county councils such as exist in the United Kingdom.

The special considerations applicable to each part of the country and the particular treatment they involve, cannot be set against the obvious advantages of economy and expedition in administration as well as the elimination of unnecessary barriers to progress. "The hydro-electric resources of the Frontier must of necessity sustain industries in the Punjab. The history of the last seven years provides distressing instances of how the existing provincial divisions have hindered and in some cases frustrated the overall economic development of West Pakistan".[1] Not only does integration offer prospects of rational development, but it should remove the obstacles to efficiency often created by the exercise, by each Province, without regard for its neighbours, of the powers and rights granted under the Government of India Act, 1935. The unco-ordinated use of these rights and powers has frequently led to unnecessary and sometimes inexplicable complications. One Province might, for reasons best known to its own Provincial Government, declare restrictions on the movement of a vital foodstuff, to the detriment of an adjacent Province and to the disadvantage of the country as a whole. These things were possible and have actually occurred.

The opponents of the scheme have advanced several contentions. They have suggested that consolidation threatens to extinguish forever local cultures and to cause the disappearance of local languages in some of which worthwhile literatures exist. To this, it may be objected that experience in many parts of the world does not show that administrative consolidation is necessarily damaging to this kind of valuable heritage and those who care for ancient culture and artistic values would do better to study the effects of inferior entertainment such as is offered by the cinema, television, radio, poor quality books which, put together, are much more destructive.

Reference is also made to questions of administration such as arise, for example, by reason of differences in local systems of land tenure and of the fact that one ethnic or linguistic group (*e.g.* the Pathans) might be at a disadvantage as against a more numerous linguistic group, with the result that the smaller groups may suffer with respect to their economic interests and their representation

[1]Prime Minister's broadcast to the nation 22 November, 1954.

in the State services. Suppose, for example, it became necessary, having regard to world over-production, to limit cotton sowings the fear is that heavier limitations might be imposed on those areas whose representation in the One-Unit Government, both in the Legislature and in the administration, is less numerous. It has even been suggested that, ultimately, the effect of the One-Unit scheme will be to concentrate power, in West Pakistan, permanently in the hands of certain predominating groups of people.

It will be obvious that all these objections depend, for their validity, upon the assumption that the existing distinctions, while abolished in name, will continue to operate in fact and that it will not be possible to create, in the fullness of time, "West Pakistanis" in place of "Punjabis", "Sindhis", "Pathans", "Baluchis" and so on.

There is no doubt that this major process of consolidation will damage some individual interests, as must happen when, in any country, changes so far-reaching as these, are made. Opportunities of local patronage will be much reduced. The extent and diversity of methods of favouritism and nepotism will greatly diminish. The distribution of permits to do this and licences to do that will no longer be the sport and plaything of several Ministers, but only of one so that even if the evil cannot be eliminated, its incidence can be reduced. A number of politicians foresee the day when, in order to secure election, they will be obliged to offer to their supporters prospects other than the grant of some remunerative privilege—good government, for example.

A more significant argument against the One-Unit scheme relates to the position of the Central Government *vis-a-vis* a solid East Pakistan and a solid West Pakistan. It remains to be seen whether these two powerful Provinces will agree that the Centre should be strong. If the Centre is not strong enough or does not give the appearance of being strong enough, what will be the position of Pakistan in international affairs? This is a pertinent enough question.

These brief observations do not purport to cover the subject fully. They are intended to indicate what is meant by the One-Unit Scheme so that the political developments of the time can be better understood.

The decision of the Government to introduce the scheme was announced to the public by the Prime Minister in a broadcast on 22 November, 1954. Apart from such considerations as have already been mentioned, he advocated support on the grounds that

consolidation of West Pakistan was in keeping with Islamic ideology whose unifying force overrides territorial boundaries. He said that this scheme of consolidation would simplify the making of a constitution and would enable Pakistan to have as near a unitary constitution as would be possible in the particular geographical circumstances in which Pakistan was placed. He added that provincialism would, in time, disappear and that safeguards would be provided to ensure that, until its disappearance, the interests of the smaller groups would be protected.

The first indication of official welcome to this announcement was made in the Legislative Assembly of the North West Frontier Province when the Chief Minister, Sardar Abdur Rashid, on 26 November, 1954, moved a resolution welcoming the One-Unit proposal. He was fully supported by his Ministers of whom one, Mian Jaffar Shah, extolled the proposal and said that if the scheme had been introduced a year or two earlier, the country would not have had to endure so many political difficulties. These views of Mian Jaffar Shah are to be compared with his approach to the matter when it came before the Constituent Assembly in August, 1955. He then moved that the Bill for the creation of West Pakistan should be circulated for the purpose of obtaining public opinion by 1 January, 1956 and he went on to say that the sponsors of the Bill had hatched a dangerous conspiracy[1]. The importance of this is not so much to do with the merits of the Bill, but because it is an apt illustration of the instability in politics which has, unfortunately, become a characteristic of Pakistan affairs. It is not, however, to be assumed that this chameleon quality necessarily arises from dishonesty. It is as much due to folly and to the dangerous habit of speaking first and thinking afterwards.

Likewise, the then Chief Minister of the Punjab, Malik Firoz Khan Noon, lost no time in supporting the proposal and he took the opportunity of claiming some credit for being one of the originators of the idea[2]. Despite this immediate and widespread measure of approbation in Provincial circles, it is a noteworthy circumstance that the Ministries in the North West Frontier Province as well as the Punjab, in office at the time the One-Unit scheme was announced, both of which supported the scheme, later succumbed to political changes and both fell before the new Constituent Assembly met in Karachi when the One-Unit Bill was presented to the House for consideration.

[1]The differing statements of Mian Jaffar Shah are set out in *The Times of Karachi*, Karachi, 25 August, 1955.

[2]*Ibid.* 26 November, 1954.

Malik Firoz Khan Noon's Ministry in the Punjab was dismissed on 21 May, 1955, and Sardar Abdur Rashid's Ministry in the North West Frontier Province fell on 18 July, 1955. In the latter case, it is worth recalling that Sardar Abdur Rashid and his colleagues were elected to the new Constituent Assembly without having declared their new-found opposition to the One-Unit plan. They were elected at the time when, apparently, they continued to support it. None of them, however, resigned his seat in the Constituent Assembly after making public his change of heart and this is a further indication of the state of politics in the country. In defence of these members, it can be added that their conduct was by no means without precedent and in the previous Constituent Assembly there were cases on record of members changing their parties and their policies but retaining their seats.

It is not here suggested that changes of this sort are peculiar to Pakistan and do not happen elsewhere: they do. An outstanding instance of changing parties will be found in the career of no less a man than Sir Winston Churchill who is generally thought to be a worthy example of a great Parliamentarian. What is noticeable in Pakistan affairs is the light-hearted and irresponsible manner in which these things are done, without regard for the electorate or the declarations made to the electorate and with absolutely no regard for the possibility of reaction in foreign countries.

It seems that the Rashid Ministry became opposed to the One-Unit plan purely on grounds of local sentiment and Pathan patriotism. There could be no doubt that in the North West Frontier Province there was opposition to the plan, led conspicuously by the Pir of Manki Sharif who, as we have had occasion earlier to remark, is an influential religious leader. The population of the North West Frontier Province, including the Frontier Regions and States, is less than six million. The population of its neighbour, the Punjab (including Bahawalpur State) exceeds twenty millions[1] and the fear clearly is, despite assurance that measures will be taken to protect the interests of smaller groups, that the people of the North West Frontier Province may in the long run suffer. There is no answer to such fears, except for the bigger groups, such as the people of the Punjab, to give the lead in showing that they have given up all parochialism in their thinking. Dissatisfaction will continue to be expressed by those whose local privileges have been adversely affected by the consolidation and whose local patronage has suffered. These are unavoidable accompaniments of such changes and nothing can be done about them until the people concerned, and their troubles, are forgotten.

[1] According to the Census of 1951.

The reasons for the dismissal of Malik Firoz Khan Noon, are not as clear. So far as can be ascertained, his differences with the Central Government were based less on principle than on personalities, and when the Bill for the creation of West Pakistan came before the new Constituent Assembly, Malik Firoz Khan Noon explicitly stated that although he had fully supported the scheme, he became suspicious of the motives of others in the Central Government, who were anxious to see it implemented with a speed and for reasons which, evidently, were to him unpalatable.

Along with the two Provincial Ministries (that of Malik Firoz Khan Noon and that of Sardar Abdur Rashid) which had supported the One-Unit scheme in the first place and whose leaders later found themselves in opposition, there was the Awami League party of Mr. H. S. Suhrawardy. As a Minister of the interim Government which Mr. Mahomed Ali had formed on 24 October, 1954, at the Governor-General's invitation, Mr. Suhrawardy was, it must be presumed, agreeable to the One-Unit proposal, although it is true that Mr. Suhrawardy joined the Cabinet about one month after the Prime Minister's first announcement on the subject. It must further be presumed that, since he held the portfolio of Law, Mr. Suhrawardy had a great deal to do with the work of setting up the proposed Unit. Indeed, the very Ordinance and Order, to which reference will again be made,[1] purporting to arm the Governor-General with powers to set up the One-Unit, were issued by the Ministry of Law at the time when he was Law Minister. Nevertheless, such is the unpredictable nature of politics that when the new Constituent Assembly met in Karachi, Mr. Suhrawardy's party was opposed to the scheme, if not in principle, then in detail. It is, of course, open to all of these opponents to assert that the scheme as it was first introduced to the House on 24 August, 1955[2] was not in the same form as when approved by them and there is nothing unsound, from the point of view of good Parliamentarianism, when an opposition agrees in principle but criticises the detail or the application of a measure. However, the right of the opposition to proceed on these lines will not justify inconsistency towards the electorate or the abuse of the electoral principle.

When the Assembly met in August, 1954, the general trend of the Opposition was not so much to the principle of consolidation as to the speed with which the Bill was being pressed through the House. The opposition also objected to the proposal of simple majority voting (which had to be modified later), and to the

[1]Ordinance No. IX of 1955 and G.G. Order No. 4 of 1955.
[2]By Sardar Amir Azam Khan.

inclusion of Karachi in the consolidated Province. The Opposition wanted time during which the public could be circulated on the question and it was also proposed that a referendum should be held. It was suggested that elections to the Provincial Legislature should be conducted by means of proportional representation and that Karachi should be excluded from the new Province and remain a separate entity as the Federal Capital of the whole of Pakistan.

There is no disguising the fact that on the rock of the One-Unit plan, all three Ministries in Sind, the Punjab, and the North West Frontier Province had fallen. In similar circumstances, the Ministry governing the acceded State of Bahawalpur had been dismissed and the State Legislature dissolved on 2 November, 1954. Such was the extent of the casualties. The unyielding determination with which these ministerial changes were made and the One-Unit scheme pursued, was again adduced as evidence of the quasi-dictatorial nature of the new Government. On the other hand, in its single-minded pursuit of the objective, the new Government was running into legal difficulties which, in turn, lent credence to the claim that, above all things, the rule of law was to be respected.

There was, of course, no room or opportunity for doubt as to the purpose of the Government. The Prime Minister's broadcast on 22 November, 1954 was followed by an Order of the Governor-General[1] establishing a Council for the Administration of West Pakistan. Its membership comprised Governors and Chief Ministers (or equivalent in each case) of the units which made up West Pakistan and it met for the first time on 18 December, 1954. The Governor of the Punjab[2] was elected Chairman and four committees were set up. These Committees comprised top-ranking permanent officials whose business was to settle problems of organisation, staff, integration of the Services, and co-ordination of publicity.

In March, 1955, there appeared Ordinance No. IX of 1955 to which reference was made in the preceding chapter when discussing the case of Maulvi Tamizuddin Khan. In this Ordinance, provision was made by which the Governor-General could make such orders as appeared necessary or expedient for constituting the Province of West Pakistan and in pursuance of this Ordinance, an Order of the Governor-General was issued[3] whose purport was

[1]G.G.Order No. 8 of 1954.
[2]H.E. Mr. M. A. Gurmani.
[3]G.G.Order No. 4 of 1955.

to create the new consolidated Province of West Pakistan. Both Ordinance No. IX and Order No. 4 are dated 27 March, 1955 so that even the most ardent supporter of the One-Unit scheme could not complain that time was being wasted. Further Orders[1] were published on 30 March and 4 April. Their effect was to make Dr. Khan Sahib a member of the West Pakistan Administrative Council and to empower the Governor-General to appoint the Governor as well as the Chief Minister of the new Province.

Unfortunately, however, this zeal was frustrated by a decision of the Federal Court[2] in which it was held that the Governor-General could not act in a manner which amounted to legislating constitutionally. Hence, it was not possible to pursue the creation of West Pakistan on the authority of Ordinance No. IX and the Orders made by virtue of it. To give effect to the One-Unit scheme, the only course open was to secure enactment of a Bill to that effect by the Constituent Assembly and the summoning of that Assembly is a matter to which attention must now be turned.

[1]G.G. Orders Nos. 5 and 6 of 1955.
[2]Usif Patel *vs.* The Crown *supra.*

CHAPTER XI.

CHOUDHARY MAHOMED ALI BECOMES PRIME MINISTER

When Mr. Mahomed Ali formed a new Cabinet, following the dissolution of the Constituent Assembly on 24 October, 1954, the Province of East Bengal was being administered by its Governor under Section 92-A of the Government of India, Act 1935. The changes at the Centre did not affect this situation in the least and when Major-General Iskander Mirza came to the re-constituted Cabinet in the capacity of Minister of the Interior, the suspended Legislature of East Bengal was not summoned, nor was Mr. Fazlul Huq, or, for that matter any one else, asked to form a Provincial Ministry. In a word, East Bengal did not enjoy representative Government nor could it be said that East Bengal was suitably or adequately represented in the Central Government having regard to the Provincial elections of 1954.

As a measure of correction in this regard, Mr. H. S. Suhrawardy, after several weeks of protracted negotiation, joined the Cabinet as Minister for Law. Mr. Suhrawardy's more proximate qualifications for the appointment (apart from his generally acknowledged ability) lay in the fact that he was the founder and leader of the Awami League party which had shared substantially in the triumph over the Muslim League during the East Bengal Provincial elections earlier in the year. The possibility of his joining the Central Government had long been a subject of speculation. Mr. Suhrawardy was, at one time, a prominent member of the All-India Muslim League and, prior to the partition, he had once been Chief Minister in the Muslim League Government which ruled the undivided Province of Bengal.

When the partition of Bengal was announced (along with that of the Punjab) in 1947, Mr. Suhrawardy raised the standard of an "undivided, sovereign Bengal". The cry was by no means frivolous or unpopular. The people of Bengal have, as a whole, always shown a somewhat separatist tendency and, in modern times, they have become impatient of the economic ascendancy in their own Province of Marwaris and Punjabi Hindus. Whether or not Mr. Suhrawardy's slogan was conformable to what had been agreed at Lord Mountbatten's negotiations or to the ideas of the Muslim League and the Indian National Congress is one question: what is quite certain is that the idea was neither

unhistorical nor disagreeable to many Bengalis. Be that as it may, it was certainly disagreeable to the Muslim League High Command and Mr. Suhrawardy was replaced, as leader of the Bengal Muslim League, by Khwaja Nazimuddin. From this point onward may be measured the declining cordiality of relations between Mr. Suhrawardy on the one side and Mr. Jinnah and Mr. Liaquat Ali Khan on the other. For some time after the partition Mr. Suhrawardy contented himself with on-the-spot labours in aid of Muslim refugees in India, where he worked in close collaboration with Mr. Gandhi. When this work was finished, the political situation in Pakistan had taken shape with no place for Mr. Suhrawardy who was, in any case, critical of the Government led by Mr. Liaquat Ali Khan.

Later, he founded the Jinnah Awami League. The name "Jinnah" explains itself; the word "Awami" signifies "nation" in the sense of the mass of the people. Subsequently, the party became generally known as the "Awami League". The party was conceived on a national basis and began its work in most parts of Pakistan. It showed promise in fact of becoming a national, political body cutting across the east-west division of the country, and its national aspect was reinforced by its sympathy for the principle of joint electorates, that is to say, of a common electoral roll, without division by religious communities.[1] The abandonment of the principle of allotment of seats in the Legislature by reference to religion, as had been contemplated in the Reports of the Basic Principles Committee, was an important, and many thought, desirable step. At all events, it showed that the Awami League party was trying to get away from the fetters of communalism and, at the same time, its action represented a serious bid for the support of the large and important Hindu community of East Bengal.

It is to the credit of Mr. Suhrawardy that in the teeth of considerable difficulty and opposition, he founded and built up a new party, based on a programme which to some extent he was eventually to see implemented by those in power. It had long been Mr. Suhrawardy's contention that the first Constituent Assembly had ceased to be representative of the people and that it should be dissolved. The day came when this was to happen.

The question of his joining the Central Government was revived by the success of his party in the East Bengal Provincial elections as well as by his recognised talents. It was a question

[1]See *Dawn*, Karachi, 8 August, 1955.

which, in fact, had been deferred mainly by an illness rendering necessary his absence from Pakistan for some months. Apart from the delay thus caused, there was the difficulty created by Mr. Suhrawardy himself who claimed that the only office in the Government that would satisfy his party and himself was that of Prime Minister. Later, however, he disclaimed any desire to occupy the office of Prime Minister in the existing coalition.[1]

After a good deal of discussion, Mr. Suhrawardy joined the Central Government, in December, 1954, as Minister for Law and it was generally understood that Mr. Suhrawardy, who has many years of legal practice to his credit, would undertake the responsibility of preparing the constitution which it was the duty of the new Government to draft for the approval of the nation. Mr. Suhrawardy's entry into the Cabinet was followed by a visit to London of Mr. Mahomed Ali where he attended the Conference of Commonwealth Prime Ministers. It was on this occasion that Mr. Mahomed Ali explained to the Prime Ministers the decision of Pakistan to declare itself a Republic, remaining within the Commonwealth as India had done. Sir Winston Churchil replied that the decision was fully understood and accepted by the Commonwealth nations.[2] This decision of Pakistan was reaffirmed by the Prime Minister of the re-constituted Government of Pakistan at a Press Conference held on 2 September, 1955.[3]

On 15 April, 1955, the Governor-General made the Constituent Convention Order[4] of which the purpose was to set up a Constituent Convention. This Order was amended by two more[5] which followed within the next twelve days and it is therefore convenient to consider them together. Their effect was to create a Constituent Convention having eighty members representing all the administrative units of Pakistan. These representatives were to be elected, in the case of Provinces, by the members of the Provincial Legislatures, and, in the remaining instances, the representatives were to be appointed by the Governor-General.

In the meantime, however, the Federal Court delivered its opinion on certain questions submitted by the Governor-General,[6] and, having regard to the advice there given, it became necessary

[1] *The Times of Karachi*, Karachi, 3 September, 1955.
[2] *Civil and Military Gazette*, Lahore, 5 February, 1955.
[3] *The Times of Karachi*, Karachi, 3 September, 1955.
[4] G.G. Order No. 8 of 1955.
[5] G.G. Orders Nos. 9 and 10 of 1955.
[6] Report on Special Reference No. 1 of 1955, *supra*.

to supersede the Orders setting up a Constituent Convention, by an Order[1] setting up a Constituent Assembly of eighty members, all of whom were to be elected and none nominated or appointed. The composition of the newly conceived Assembly was specified in the Order by which the seats were to be distributed among the administrative units of Pakistan and in this connection, it is again to be remarked that the principle of parity was observed in that, out of eighty seats, forty were allotted to East Bengal. Out of those forty, nine seats were specifically reserved for non-Muslims so that the principle of division by religious communities was likewise retained.

With respect to the Provinces of East Bengal, Sind, Punjab, and North West Frontier, representatives were to be elected by the existing Provincial Legislatures by the method of proportional representation with the single transferable vote. Special provision was made for elections in the case of Baluchistan and Karachi; and as to the remaining administrative units, arrangements for elections were to be made by the Constituent Assembly itself after it had been summoned. On the same day that this Order was published, the Ministry of Law intimated to the public, by a Notification, the days appointed by the Governor-General for holding the elections.

The effect of the new Order was to set up a Constituent Assembly—the name adopted in pursuance of the advice of the Federal Court—by means of elections and without appointments by the Governor-General. The structure of the proposed Assembly was similar enough to that which had been dissolved. Its number was limited to approximately one representative per one million of the population and its membership was recruited, as it were, from the existing Provincial Legislatures, except in so far as areas, hitherto unrepresented, were given elected representation by a newly prescribed machinery. To this extent, therefore, it could reasonably be argued that the new Assembly would be more truly representative of the people because, although there had been no elections to the Central Assembly since the creation of Pakistan, there had been elections in all the Provinces—in the case of East Bengal as recently as 1954—and the new membership would therefore be based upon elected bodies which had, more or less recently, appealed to the popular suffrage. Even if the arrangement did not promise any direct decisions of the people, it was probably the best that could be devised in the circumstances.

[1]No. 12 of 1955.

It was remarked that the terms of the Governor-General's Order breathed a good deal of caution. The Order provided that he could summon the Assembly to meet at such time and at such place as he thought fit; that he could prorogue the Assembly and that he could dissolve the Assembly in exercise of the powers derived by him from the Indian Independence Act, 1947—a neat touch, adopting the phraseology of the Federal Court without commitment, as it were.[1] Moreover, the Chairman of the Constituent Assembly was to be appointed by the Governor-General until such time as the Assembly elected its own President in accordance with the terms of the Order. Finally, the Governor-General reserved the power to issue further orders to revoke or amend any provision of the Order. As will later be seen, these points were not lost upon some members of the Assembly when it came to be summoned.

Meanwhile, there were other problems to be thought about having a direct bearing on the political aspect of the subject. In the first place, what was to be the position of the Central Ministers who had formerly been Civil Servants and who had never been elected to anything? What would be the position of the Minister of Defence who was Commander-in-Chief of the Army which, it was an inflexible rule, should not meddle in politics? What would be the position of men like Mr. M. A. Gurmani who had been a member of the former Constituent Assembly and was now a Governor of a Province? Finally, what was to be the position of the East Bengal Legislature which was still suspended from governing in its own Province?

The answers to these questions proved, in some respects, to be simple, even if not altogether satisfactory. So far as the Commander-in-Chief of the Army was concerned, an announcement was made at an early date that no attempt would be made by him to secure election to the new Assembly, thereby implementing an earlier promise of Major-General Iskander Mirza that the Armed Forces would be disassociated from politics as soon as possible. This announcement was a source of general satisfaction. In the case of Mr. Gurmani, he was Governor of the Punjab and he had allowed his name to go forward as a candidate for the new Assembly. The objections to this are not difficult to trace, since it is clearly not conformable to the basis of the constitution that the head of a Province who is advised by a Cabinet of Ministers, should also be involved in controversial politics elsewhere. A more precise and pertinent objection was that under the Order by which the new Assembly was to be set up, provision was made that Provincial

[1] Report on Special Reference No. 1 of 1955, *supra*, p. 112.

Returning Officers should be appointed by the Provincial Governors.[1] Since the Returning Officer was the official who would conduct the election of the Assembly members, a situation, not necessarily opposed to justice but not entirely satisfactory, was created.

As it happened, Mr. Gurmani was not only elected a member of the new Constituent Assembly, but he was afterwards appointed Chairman of the Assembly by the Governor-General in exercise of the powers contained in the Order,[2] a matter which afforded opponents of the Governor-General's entire course of action, with opportunities for criticism and objection.

According to a statement of the Prime Minister, Mr. Mahomed Ali, it was decided that any person who was a Provincial Governor and who was also elected to the Assembly, would have the option of choosing, within six weeks, whether he desired to continue as a Provincial Governor or as a member of the Assembly. He could not thereafter continue in the dual capacity. However, it was later explained by the new Prime Minister, Choudhary Mahomed Ali, that the decision actually was that the option would have to be exercised by any such individuals within six weeks after the passage of the One-Unit Bill. This arrangement did, of course afford a substantially longer period of time within which any person could occupy both a seat in the Assembly and the Provincial Governorship. Indeed, it amounted to an indefinite provision and it could not be said that the arrangement was agreeable to current democratic notions or even to ideas of efficiency in provincial administration. It must be hoped that as Pakistan's constitutional problems disappear, extraordinary measures of this kind will become unnecessary.[3]

The question of the Central Government Ministers who had never been actively engaged in party politics was a thorny one. If their position as Ministers was to be secure and if the promise of representative Government was to be fulfilled. it was clearly necessary that they should be elected from somewhere but in the absence of old party affiliations this was not an easy problem to solve. Ultimately these Ministers were adopted as official Muslim League candidates in the Punjab a decision reached only after some controversy, which is probably related, in some measure at least, to the fall of Malik Firoz Khan Noon on 21 May, 1955.

[1] G.G. Order No. 12 of 1955, paragraph 5.

[2] *Ibid.* paragraph 10.

[3] See Statement by Choudhary Mahomed Ali at Press Conference reported in *Dawn*, Karachi, 3 September, 1955.

The position of the Prime Minister Mr. Mahomed Ali, although he was not a former Civil Servant, was most precarious, since his party the Muslim League had been swept from the East Bengal Legislative Assembly and Mr. Mahomed Ali is a Bengali. It appears that a suggestion was made that the Punjab Muslim League should adopt him also, but either the League declined to do this or Mr. Mahomed Ali decided to remain identified with his own Province. In either case, his prospects of election from East Bengal were so poor as to be extremely remote.

While all these matters were under active consideration and public discussion, the Governor-General, about a week before publication of the all-important Order No. 12, was compelled, after a prolonged struggle with ill-health, to leave Pakistan for Europe in search of further medical advice. Three days after his departure, Mr. Suhrawardy followed him and they met in Zurich to discuss the measures necessary for setting up the new Constituent Assembly.

While the Governor-General and the Law Minister were thus conferring some thousands of miles from Pakistan, it was announced that Mr. Mahomed Ali was proceeding, on 2 June, 1955, for a short visit to East Bengal. On 3 June, the Prime Minister made an announcement, while still at Dacca, informing the country that he had decided to remove the operation of Section 92A and to restore parliamentary government to East Bengal. It was added that Mr. Fazlul Huq, although leader of the United Front party, which commanded a majority in the Legislature (excluding, of course, the Awami League with which the United Front had quarrelled) had decided not to lead the new Provincial Cabinet but had delegated that responsibility to a nominee. In other words, Mr. Fazlul Huq had his eye on the Centre.

This announcement came as a surprise and it was suggested in some quarters that Mr. Mahomed Ali had taken advantage of the absence of the Governor-General and Mr. Suhrawardy to negotiate with Mr. Fazlul Huq with respect to the problem of Section 92A. It is not irrelevant to mention here that when the time came for the elections to the new Constituent Assembly, Mr. Mahomed Ali was elected from East Bengal with eighteen votes—sufficient, but a poor showing when compared with Mr. Huq's one hundred and four and Mr. Suhrawardy's ninety four. Whatever the facts are, Mr. Mahomed Ali had obligingly cut the Gordian knot of Section 92A in East Bengal and had convincingly demonstrated the weakness of his own personal situation.

The result of the elections to the new Assembly showed that the Muslim League party was the strongest, but with no overall majority as against the other parties comprising the United Front and the Awami League: the independent opposition groups such as those of Malik Firoz Khan Noon and Sardar Abdur Rashid and the independent members, Mr. Fazlur Rahman[1] and Mian Iftikharuddin.[2] In these circumstances and in view of the already expressed opposition to the major reform entailed by the One-Unit plan, it was obvious from the constitution of the House, that some political manoeuvring would be inevitable.

On 22 June, the Ministry of Law issued a Notification stating that the Governor-General had been pleased to summon the Constituent Assembly to meet at Murree on 7 July, 1955. Murree is a small township—a summer resort—in the foothills of the Himalayas, about 7,000 feet above sea level and about nine hundred miles from Karachi. The proposed venue provoked a good deal of comment. Some people thought it an unnecessary public expense to make provision for holding the Assembly in Murree when adequate arrangements already existed in Karachi. Others held that the temperate and agreeable atmosphere of Murree would be conducive to brisk and constructive work, accompanied by a minimum of time-wasting controversy. Still others thought that the climate and the altitude would not suit those members of the Assembly for whom the passage of time had induced frailties of the body. There were also those who sought to know what sinister scheme lay behind this decision. The people who most nearly guessed right were those who foresaw that the climate would not be suitable for some of the members and all controversy on the matter was set at rest soon after the Assembly met in Murree, when, a little later, it adjourned to meet again in Karachi.

Another Notification dated 5 July, 1955 of the Ministry of Law informed the public that the Governor-General had been pleased to nominate Mr. M. A. Gurmani as Chairman to preside at meetings of the Constituent Assembly until a President was elected. This is another controversial subject which will be touched upon in its place. Meanwhile, the Assembly duly met at Murree on 7 July and, after gathering together on six occasions, the last of which was the 14 July, it adjourned until 8 August, on which day it was due to re-assemble at Karachi.

[1] At one time Commerce Minister in the first Constituent Assembly.

[2] Convenor of the Azad Pakistan Party. "Azad" means "free" in the sense of enjoying liberty.

The temper of the House when it first met was unmistakably that of asserting its privileges and its independence. It is, perhaps, no exaggeration to say that there was an air of truculence in, for example, the manner in which certain Awami League members insisted on taking the oath in the Bengali language. At the very outset, the procedure by which H. E. Mr. M. A. Gurmani was permitted to submit his credentials, make affirmation and sign the roll was challenged by Mian Iftikharuddin. The purpose of this enrolment was to make it possible for Mr. Gurmani to take the Chair, until a President was elected, in accordance with the nomination of the Governor-General.[1] The opposition to this procedure was founded upon the claim that the House was entitled to elect its own Chairman and that when the first Constituent Assembly of Pakistan met on 10 August, 1947, this claim was recognised by the election of Mr. J. N. Mandal as temporary Chairman, although it was stated later in the debate at Murree by Mr. Suhrawardy that Mr. Jinnah, as Governor-General, had the right to nominate the Chairman of the House had he so desired but did not choose to exercise the right.

On the Government side, an attempt was made to meet the point by a motion that the House do approve of the appointment of Mr. M. A. Gurmani as Chairman until such time as the Constituent Assembly should elect its own President. This motion was adopted after an amendment by which its purport became that the House approved his appointment and elected him as Chairman.[2] A determination to show independence was reflected in a notice given by a private member of a Bill to limit the Governor-General's powers. When a question of the Governor-General's discretion arose with respect to measures passed by the Constituent Assembly, another member declared that he would never agree to it.[3]

The spirit in which the Assembly first met was undoubtedly the cause of much unprofitable cut-and-thrust on the floor of the House, the raising of points of order and points of explanation and even interjections that constituted no point at all. It seemed, at one time, as if the new Constituent Assembly was no more conscious of the emergency that confronted Pakistan than its predecessor had been. In retrospect, however, it is evident that the House did well in demonstrating its determination not to act as the tool of its convenor and just as the Governor-General had acted wisely in putting an end to the interminable and infructuous

[1] Constituent of Assembly of Pakistan Notification dated 5 July, 1955.

[2] Constituent Assembly Debates, 1955, Vol. 1, No. 1, p. 1 *et seq.*

[3] *Ibid.* No. 3 p. 95.

labours of the first Assembly, so the second Assembly did well in establishing its position as an independent body. Indeed, considering the difficulties into which Pakistan had fallen, the obvious efforts made on all sides to restore sound constitutional government on principles which are as well established as familiar, merit high praise.

It is unfortunate that the periodic flurries that agitate the House—usually over some trivial point of order that is, often enough, no point of order at all—excite greater public interest then serious debate. A study of the proceedings at Murree during that month of July will show that despite the occasional expunging of certain remarks from the proceedings[1], the level of debate was sound and that many members drew upon considerable intellectual resources. Mr. Suhrawardy's exposition of the legal position following upon the decision of the Federal Court in Maulvi Tamizuddin Khan's case and Usif Patel's case, was both lucid and comprehensive and the speech of Mr. Hamidul Huq Choudhary was an equally valuable contribution to the difficult question of validating those laws which, because the assent of the Governor-General had not been given to them in the first place, required fresh approval of the Constituent Assembly.[2]

The problem of re-validating these statutes was undoubtedly a difficult and delicate one since inevitably it had the result of calling into question once again the merits of the statutes themselves. In one or two instances, those merits were dubious. There was, for example, the Rawalpindi Conspiracy (Special Tribunal) Act, 1951. This act was passed to make it possible to try, *in camera*, certain officers of the Armed Forces and certain civilians for offences in the nature of a conspiracy against the security of the State. The effect of the Act was, *inter alia*, to amend the law of evidence, solely for the purpose of this particular trial, so that written matter which, in normal circumstances, would have been inadmissible in evidence, was made admissible. Other disabilities were placed upon the persons charged and, as does not seem extraordinary in such circumstances, they were convicted and sentenced to imprisonment. Apart from the merits of the case and the apparent intentions of the persons tried in it, many people considered that a dangerous precedent had been established and that if it were necessary to adopt these measures in order to make conviction possible, the presumption was raised that perhaps these persons were,

[1] *Ibid.* No. 5 p. 11 and p. 14.
[2] *Ibid.* No. 3, passim.

in truth, innocent.[1] At all events, when the question of re-validating this particular Act arose, in common with others, many members of the Bar expressed themselves as strongly opposed to it.[2] This instance affords some indication of the problems involved and it was decided to refer the matter of validation to a Select Committee of the House.

Before adjourning, the House took power to elect a Speaker and a Deputy Speaker (instead of a President and Deputy as in the first Constituent Assembly) in the Constituent Assembly (Proceedings and Privileges Bill,[3]) and shortly after the meetings at Murree came to an end.

On 7 August, the Governor-General was compelled to take two months' leave for reasons of health and Major-General Iskander Mirza vacated the post of Minister of the Interior and became Acting Governor-General. About a fortnight after this appointment, General Mirza gave up his seat in the Constituent Assembly.[4] At approximately the same time, Choudhary Mohamed Ali, the Finance Minister, was elected leader of the Muslim League Party and Mr. Mahomed Ali submitted his resignation as Prime Minister.

In the Government formed after Mr. Mohamed Ali's resignation there was no portfolio for him and he resumed his former post as Pakistan's Ambassador in the United States. Upon his departure from the Prime Ministership, some hard words were uttered by those whose goodwill he did not enjoy.[5] There seems to be little doubt that after the success of the United Front and the Awami League in the East Bengal Provincial elections of 1954, the security of Mr. Mahomed Ali's position, even in the Central Government, was a forlorn hope which he tried by methods of his own to bolster up. In this he failed as, indeed, it was almost certain he should do and his departure from Cabinet office was nothing more than a return to political realities for the plain fact was that as a Prime Minister, he had no genuine support. During his tenure of office he was more successful abroad than he was at home which is never a sound position for, in politics as in the

[1]See *Ibid.* p. 94.

[2]See *Dawn*, Karachi, 10 August, 1955.

[3]Constituent Assembly of Pakistan, Debates, 1955, Vol. 1, No. 6.

[4]24 August, 1955.

[5]See, for example, comment on his *Machiavellianism* in *Morning Post*, Karachi, 10 August, 1955.

manufacturing industry, the home market is always more important than the foreign.[1]

Upon Mr. Mohamed Ali's resignation the question became that of forming a new Government and for some days political speculation in Karachi rose to unprecedented heights of activity. The nub of the matter was that a coalition Government had to be formed and the problem was how and with whom. Mr. Fazlul Huq's United Front offered to join a coalition with the Muslim League (the claims of the latter depending on the fact that it was the biggest single party in the House) on the terms that the Awami League should be excluded from the Government and that in exchange for support for the West Pakistan One Unit plan, the Muslim League should agree to regional autonomy in the new constitution. The Awami League offered to join the coalition on the terms that Mr. Suhrawardy should be Prime Minister, that the new constitution should provide for joint electorates and no division by religious communities and that Bengali should be adopted as a State language.[2]

As it turned out, Mr. Suhrawardy did not become Prime Minister, nor did his party join the new Government formed by Choudhary Mahomed Ali. It would have been difficult to appoint Mr. Suhrawardy Prime Minister seeing that of the three principal parties in the House his was numerically the smallest. Nevertheless, Mr. Suhrawardy claimed that the Prime Ministership had been promised to him[3] and he went on to explain that after he had made it clear that he would not tolerate corruption, nepotism, bribery and injustice, the leaders of the Muslim League withdrew their support and also their promise.[4] The coalition was formed between the Muslim League and the United Front under Choudhary Mahomed Ali,[5] who continued to express the hope that Mr. Suhrawardy might yet be persuaded to join the coalition, but Mr. Suhrawardy resolutely set his face against the idea and said he did not believe in political bargaining.[6]

Choudhary Mahomed Ali's Cabinet, formed on 10 August, 1955, comprised, therefore, two parties, the Muslim League and the United Front and one seat was given to a caste Hindu, Mr.

[1]See articles in *The Economist*, London, 9 July, 1955 and 13 August, 1955.

[2]See *Dawn*, Karachi, 8 August, 1955.

[3]*The Times of Karachi*, Karachi, 3 September, 1955.

[4]*Ibid.*

[5]See an interesting estimate of his abilities made in June, 1947 in *Mission with Mountbatten*, op. cit. p. 121.

[6]*The Times of Karachi*, Karachi, 3 September, 1955.

Dutta. The average standard of ability of the members of the new Government did not strike anyone as outstanding and newspapers in Karachi and elsewhere in Pakistan commented on this quite openly.[1] The new Government certainly possessed the merit of being made up of persons all of whom had been elected to the new Constituent Assembly. There were no appointees who had not been so elected which was a generally satisfying circumstance.

On 2 September, 1955, Choudhary Mahomed Ali gave his first full-dress Press Conference in the capacity of Prime Minister. He said that the highest priority would be given to the formation of the constitution, but that the passage of the Bill creating the West Pakistan One Unit would come first. Thereafter, every effort would be made to prepare the constitution which would take the form of a Federal Republic with maximum autonomy for both wings. Choudhary Mahomed Ali added that the objective of his Government was a "stable, progressive democracy dedicated to the Islamic ideals of brotherhood, justice and public weal". Minorities were promised equal rights and privileges and in economic affairs the objective would be to bring shelter, food and clothing within the common man's reach. There was also an indication that, in due time, agrarian reforms would be instituted. Finally, he promised that as soon as the constitution had been approved and passed, free and fair general elections would be held.[2]

Choudhary Mahomed Ali is a plain, straightforward man blessed with talents of a high order. His record as a Civil Servant and as a Finance Minister is outstanding and the people of Pakistan are not likely to forget the vast exertions which he undertook at the time of partition when, as one of the two members of the Partition Steering Committee, he carried an enormous burden made up of tasks of the utmost complexity. He has chosen (perhaps willy nilly) to translate his activities from the anonymity of the Service to the limelight and the hazards of politics, with what ultimate success remains to be seen. Politics in Pakistan have yet to be stabilised and the coming years are certain to witness the emergence of new and also able men and it is probable that there will some disappearance of faces, familiar perhaps, but no longer in a position to command the support of the people whose voice certainly grows stronger every day.

[1] *Ibid.* 12 August, 1955.
[2] *Ibid.* 3 September, 1955.

CHAPTER XII.

EPILOGUE.

It is self-evident that the first Constituent Assembly failed in its task and whatever may be thought of the actions of the Governor-General in the Autumn of 1954 and the measures adopted to buttress them,[1] any impartial student of the matter must conclude that by October of that year, the Constituent Assembly had reached an *impasse* which it called for extraordinary measures to solve. These extraordinary measures ultimately found their legal justification in the maxim *Salus populi suprema lex*.

There is, equally, no doubt that the first Constituent Assembly began its work with high hopes and sincere intentions, but after Mr. Jinnah's death, the driving force was sensibly diminished and then one adverse event after another added much to the growing confusion of purpose. Inertia replaced determination and the sweets of office seduced men from the path of duty. Ultimately, the first Constituent Assembly became incapable of doing its job and incapable of getting out and making way for others who might be able to. The public had become heartily weary of its endless and fruitless existence and were this not so, the Governor-General could never have succeeded in what he undertook.[2]

At various times, much has been said about malpractices in Pakistan's public life,[3] but although evils of this kind exist, they are not peculiar to Pakistan where, on the whole, too much thinking about them has acquired the aspect of a national neurosis. It is, to say the least, extremely doubtful whether the state of affairs in this regard, in Pakistan today, approaches the scope of evils of a similar kind that existed in the United Kingdom prior to

[1]The arguments adduced by the Advcoate-General of Pakistan before the Federal Court during consideration of Special Reference No. 1 were described by one of the Judges as *reactionary*. Report on Special Reference No. 1 of 1955, *supra*, p. 103.

[2]An indication of the inferior opinion formed by the public with respect to the Constituent Assembly was given by one of its members, Sardar Abdul Hameed Khan Dasti, Pakistan Constituent Assembly Debates, 1955, Vol. 1, No. 5, p. 16 *et seq.*

[3]See, for example, the views expressed by Major-General Iskander Mirza reported in *Dawn*, Karachi, 31 October, 1954 and also remarks made in an article on Choudhary Mahomed Ali, *The Times of Karachi*, Karachi, Sunday Magazine, 4 September, 1955, p. 4.

the first Reform Bill. It is almost certain that there is no such general abuse of public office in Pakistan that could not be cured by a thorough tightening of the administration of justice and the reform of the public administration. The conduct of the business of the courts of law, especially the lower courts, is very unsatisfactory. Petty criminal cases drag on for years and if justice delayed means justice denied then few people in Pakistan get justice. In this respect, plain and comprehensive reforms are urgently needed.

The second great defect in public business is bad administration (as distinguished from maladministration) manifesting itself in various indolent habits. Among the less well remunerated grades of public functionary, these habits may, in some measure, be due to inadequate living conditions, since people cannot be energetic and conscientious workers if they are not properly housed, clothed and fed.[1] Similarly, people continuously afflicted with enervating diseases such as malaria cannot be expected to toil with unremitting enthusiasm.[2] On the other hand, the well-to-do classes, except for those who have had a full and comprehensive training for the jobs they do, have conspicuously failed to give a good example. They are no more punctual and no more diligent than their less prosperous countrymen, and the measure of success that Pakistan has achieved in such matters as progress in industry has been gained in the teeth of this inertia and indolence.

It must be conceded that a number of difficult and protracted disputes with India had diverted the attention and energy of the Government to matters other than that of the constitution and perhaps it is, after all, true that before Pakistan can attain the goal it seeks, it will be necessary to experience all the teething troubles and climb all the obstacles.

A possible source of difficulty in the future may be provided by the entry of former officials and administrators into politics. Although circumstances and the failure of politicians may have rendered this development unavoidable, it is nonetheless undesirable, expecially if it should have the result of persuading every public official that there is a Minister's portfolio in his knapsack. There

[1] See *Living Standards in Pakistan*, Data Paper No. 2, prepared under the auspices of the Pakistan Institute of International Affairs for the Pacific Relations Conference at Kyoto, 1954.

[2] An anti-malaria campaign conducted in the Mymensingh District of East Pakistan revealed that 95 per cent of a population of 6,023,758 were infected with malaria. Information taken from a pamphlet entitled *Technical Assistance and You*, published by the Director, United Nations Information Centre, Karachi, 1953.

could be no more disturbing element in the ranks of the civil services, especially as several former police officers have found their way into prominent public positions.[1] These developments are viewed with disfavour by the established party politicians, especially those who fought the battles of the Muslim League, alongside Mr. Jinnah before partition[2]. It would be a great pity if an inherent antagonism between the state services and the politicians were to be created.

It is, above all, clear that, to quote a prominent Karachi newspaper: "The heart of the national problem is to establish a proper adjustment and relationship between the eastern and western wings of Pakistan".[3] The east-west problem is, beyond all argument, the core of the matter. It is a problem that will not be solved by manipulation of seats and methods of voting. There must be a genuine coming together of the two wings and a determination to be generous and to show understanding. It is probable that the sovereign remedy for their past failure to exercise a true spirit of unity can only be found in remembering the fundamental motive that inspired them to insist on partition and the creation of Pakistan. If this fails to provide the remedy, it is difficult to foresee what else will.

At the moment of concluding this chapter and, with it, this book, the constitution of Pakistan is yet to be written, approved and adopted, and for this reason there seems to be only one word that can at this stage be added. The visitor who spends only a few days in the country is likely to be deceived by the people it is most probable he will meet there. In the majority of instances, such visitors meet only the city semi-sophisticates who hug the fond illusion that a superficial knowledge of English, lipstick, and the samba makes up the whole of modern culture. But the people of Pakistan preponderatingly comprise peasants, agricultural labourers,

[1] For example, Qurban Ali Khan, formerly Inspector-General of Police, Punjab, is now Governor of the North West Frontier Province: Sardar Abdur Rashid, formerly Chief Minister North West Frontier Province and now a member of the second Constituent Assembly, was previously Inspector-General of Police, North West Frontier Province.

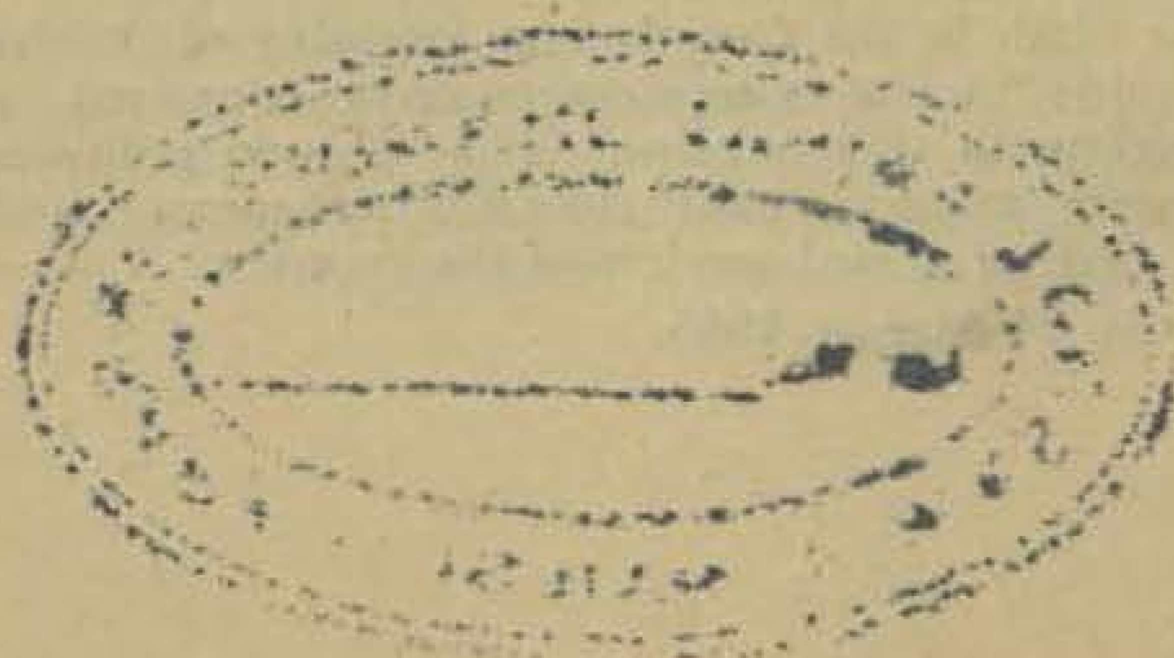
[2] See remarks of Mian Jaffar Shah in the Constituent Assembly of Pakistan on 24 August, 1955 when he said: "A few ex-servicemen have conspired together to rule the country according to their whims. They abused politicians and condemned them". The word "ex-servicemen" does not here mean "ex-soldiers" but persons formerly in the civil or armed services of the country.

[3] *The Times of Karachi*, Karachi, 24 August, 1955.

artisans, village shopkeepers and, in these days, a rapidly growing class of factory workers. Of them all it can with justice be said:

> "True hearts are more than coronets
> And simple faith than Norman blood".

They are, for the most part, decent honest people, who work hard for very little. The duty of those who have assumed the responsibilities of Government is above all to these uneducated millions dwelling in the villages and, should the Government be so unfortunate as to fail, it is among these millions that the major consequences of failure must be sought.



APPENDIX "A".

THE OBJECTIVES RESOLUTION

In the name of Allah, the Beneficent, the Merciful:

Whereas sovereignty over the entire universe belongs to God Almighty alone and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limits prescribed by Him is a sacred trust;

This Constituent Assembly representing the people of Pakistan resolves to frame a constitution for the sovereign independent State of Pakistan;

Wherein the State shall exercise its powers and authority through the chosen representatives of the people;

Wherein the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed:

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Quran and the Sunna;

Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures;

Whereby the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;

Wherein shall be guaranteed fundamental rights including equality of status, of opportunity and before the law, social economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

Wherein the independence of the judiciary shall be fully secured;

Wherein the integrity of the territories of the Federation, its independence and all its rights including its sovereign rights on land, sea and air shall be safeguarded;

So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity.

